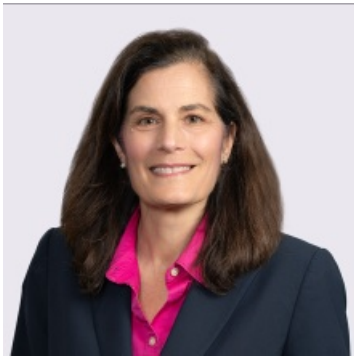


Ban-the-Box Laws in Spokane, Washington, and Kansas City, Missouri

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State and local jurisdictions have continued to consider and enact legislation restricting employers from inquiring about a job applicant's criminal background during the initial stages of the application process. Two of the latest enactments are in Spokane, Washington, and Kansas City, Missouri.

Some ban-the-box ordinances are clearer than others, which makes multi-state and intra-state compliance tricky for employers. The intent of these laws, however, is clear: giving qualified candidates with a criminal history the opportunity to succeed in the workplace.

Spokane, Washington (effective June 14, 2018)

With certain exceptions, all private-sector employers within the Spokane city limits are covered by the [Fair Chance Hiring Act](#). The ordinance prohibits employers from:

- Advertising openings in a way that excludes people with arrest or conviction records from applying, such as using advertisements which state “no felons,” “no criminal background,” or which otherwise convey similar messages;
- Including any question in an application for employment, inquiring orally or in writing, receiving information through a criminal history background check, or otherwise obtaining information about an employee's arrest or conviction record until after the employee has participated in an in-person or video interview or received a conditional offer of employment;
- Using, distributing, or disseminating an employee's arrest or conviction record, except as required by law;
- Disqualifying an employee from employment solely because of a prior arrest or conviction, unless the conviction is related to significant duties of the job or disqualification is otherwise allowed by the Act; or
- Rejecting or disqualifying an applicant for failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified for the position.

The ordinance does not cover employers that hire employees who will have unsupervised access to children under age 18 or a vulnerable person, that are in law enforcement, or that otherwise are required or permitted under federal or state law to conduct criminal background checks.

Regarding advertisements, Spokane employers may publicize a requirement for a criminal conviction background check, as long as there is no corresponding statement about automatic preclusion from employment. (For comparison, see our article, [New York City Human Rights Commission Fair Chance Act Fact Sheet Offers Compliance Guidance](#).)

Under the ordinance, employers may not inquire about an applicant's arrests or

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convictions until after the applicant has participated in an in-person, telephonic, *or* video interview *or* has received a conditional offer of employment.

If an employer receives conviction information, it cannot disqualify a candidate prior to an in-person interview or video interview solely because of a prior arrest or conviction, *unless* the conviction is related to significant duties of the job or otherwise permitted by law. While the ordinance omits “or received a conditional offer of employment,” in this provision, it would be prudent to follow this standard as it is also consistent with the type of analysis employers would undertake when conducting an individualized assessment as contemplated by guidance from the Equal Employment Opportunity Commission (EEOC).

There is a grace period on the imposition of fines until January 1, 2019. Thereafter, violations of the ordinance can result in a \$261 fine for each occurrence.

Kansas City, Missouri (effective June 9, 2018)

Under the [Kansas City ban-the-box ordinance](#), unless otherwise required by law, private employers with at least six employees may not inquire about an applicant’s criminal history until after the applicant has been interviewed for the position and the employer determines the individual is otherwise qualified for the position. The ordinance then states that “such inquiry may be made of all applicants who are within the final selection pool of candidates from which a job will be filled.”

The ordinance also makes it unlawful for an employer to make any decision to hire or promote a candidate because of the candidate’s criminal history, unless “the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.” This standard is similar to that in the relevant EEOC guidance.

To assist employers in determining “criminal history,” the ordinance specifies the following:

- Record of a conviction, or a plea of guilty or no contest, to a violation of a federal or state criminal statute or municipal ordinance;
- Records of arrests not followed by a valid conviction;
- Convictions which have been, pursuant to law, annulled or expunged;
- Pleas of guilty without conviction;
- Convictions for which a person received a suspended impositions of sentence; and
- Misdemeanor convictions where no jail sentence can be imposed.

The ordinance is an amendment of the Kansas City’s local Human Relations Act. Remedies available may be the same as for other violations, such as civil penalties, reinstatement, back pay, and actual damages.

Ban-the-box ordinances affect many facets of the hiring and employment process. All covered employers should review and revise, if necessary, their hiring practices, application forms, checklists, policies, and procedures to ensure compliance.

Employers also should provide periodic training updates to employees.

Jackson Lewis attorneys are available to answer inquiries and provide assistance with local and multi-jurisdictional issues.

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