

New York's Westchester County to Implement Ban-the-Box Law Limiting Criminal Background Inquiries

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Effective March 4, 2019, private employers in New York's Westchester County will be restricted from inquiring about a job applicant's criminal background during the preliminary stages of the application process.

Employers using employment applications that ask if an applicant has a criminal record should remove that as a required inquiry from their applications by the law's effective date. Employers also should review job advertisements or job postings to ensure that, at this stage, there are no limiting barriers to applying for employment relating to arrest or criminal history.

The Westchester Fair Chance to Work Act, which amends Westchester's Human Rights Law, prohibits any inquiries regarding applicants' conviction histories until the applicant has made a preliminary or initial application for employment. "Any inquiry" is defined as a question communicated to an applicant in writing or otherwise. It also prohibits any job advertisements or postings that would relate to arrest or criminal history, unless otherwise permitted by law (see below).

Westchester has become a ban-the-box county for almost all employees. County Executive George Latimer previously had signed an executive order banning criminal conviction questions for public sector employees.

Unlike the New York City variation of "ban-the-box," Westchester employers may ask questions regarding an applicant's criminal history after receiving an employment application. Best practice typically is for employers to wait until the post-offer stage to lawfully inquire about conviction history. This amendment to Westchester's Human Rights Law codifies New York Executive Law § 296(16), requiring employers, for example, not to consider an arrest or criminal accusation not then pending against an applicant. If an unlawful arrest or conviction inquiry is made of an individual under this Act (*e.g.*, timing or actual inquiry), the applicant is not required to respond, and the employer may not disqualify the applicant from prospective employment.

In addition, consistent with New York law, the Westchester law requires employers to conduct an analysis of the applicant's criminal history and the factors set forth in Article 23-A of New York's Correction Law

(<https://www.labor.ny.gov/formsdocs/wp/correction-law-article-23a.pdf>). These factors include the time that has elapsed since the occurrence of the offense and information produced regarding the individual's rehabilitation and good conduct. This analysis may be requested by an applicant who has been denied employment. After someone has been denied employment, if requested by the applicant, State law and now local law require providing a written statement of the reasons for denial



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The Westchester Act does not affect certain employers required by any federal, state, or county laws to run background checks on potential employees or employers that are barred from employing individuals based on criminal history. Employers of police officers, peace officers, and school teachers who have background check obligations imposed by law, by way of example, would fall into this category.

To ensure compliance with the new Westchester requirements, employers should review their existing forms and procedures and revise them as needed. Employers also should consider training those who may meet with applicants on the new requirements.

Please contact Jackson Lewis with any questions about compliance with this and other workplace laws.

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