

New Mexico Adopts Ban-the-Box, Expungement Laws

By Danny W. Jarrett, Susan M. Corcoran & Richard I. Greenberg

April 22, 2019

Meet the Authors



Danny W. Jarrett

Office Managing Principal and Office Litigation Manager
(505) 875-8567
Danny.Jarrett@jacksonlewis.com



Susan M. Corcoran

(She/Her)
Principal
(914) 872-6871
Susan.Corcoran@jacksonlewis.com



New Mexico is the latest state to adopt statewide legislation prohibiting private employers from making inquiries into an applicant's criminal history on the initial employment application. The state also enacted legislation prohibiting employers from asking applicants for information about a criminal record that has been sealed or expunged.

Ban-the-Box Law

Governor Michelle Lujan Grisham signed the "[Criminal Offender Employment Act](#)" into law on April 3, 2019. Employers should review their job applications to ensure compliance by the mid-June 2019 effective date.

New Mexico joins a number of other states, such as California, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington (as well as the District of Columbia), in addition to numerous localities, to have passed ban-the-box laws for private employers.

Employers still may make criminal background inquiries in New Mexico, but the timing of such inquiries shifts to later in the hiring process after the initial employment application, such as during the interview process or contingent upon an offer.

Additionally, the Criminal Offender Employment Act provides, "Nothing in this section shall prohibit an employer from notifying the public or an applicant that the law or the employer's policy could disqualify an applicant who has a certain criminal history from employment in particular positions with that employer."

The significant language on the ability of employers to ask about criminal convictions during the first interview and to advertise job requirements that include the passing of a criminal background check, where applicable, was suggested by the business community.

Expungement Law

Governor Grisham also signed the "[Criminal Record Expungement Act](#)" on April 3, 2019. The new law, which goes into effect on January 1, 2020, allows individuals to have certain arrest or conviction records expunged following a successful court petition. Typically, a prospective employee would not be required to disclose criminal record information that has been expunged during the employment process.

The Criminal Record Expungement Act states, however, "Upon entry of an order to expunge, the proceedings shall be treated as if they never occurred, and officials and the person who received the order to expunge may reply to an inquiry that no record exists with respect to the person; provided that arrest or conviction records shall be disclosed by the person and officials in connection with any application for or query

Richard I. Greenberg

(Rich)

Principal

(212) 545-4080

Richard.Greenberg@jacksonlewis.com

regarding qualification for employment or association with any financial institution regulated by the financial industry regulatory authority or the securities and exchange commission.”

Related Services

If you have questions regarding the new laws or need assistance to review application materials and procedures to ensure compliance, please contact the Jackson Lewis attorney with whom you regularly work.

Background Checks

~~©2019 Jackson Lewis P.C.~~ This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Workplace Training

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.