

Ban-the-Box Law Limits Criminal Background Inquiries by Federal Contractors Beginning in December 2021

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January 6, 2020

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The Fair Chance Act prohibits federal contractors from inquiring about a job applicant's criminal background in certain cases in the initial stages of the application process. The Act will go into effect on December 20, 2021.

The Act "bans the box" by prohibiting federal contractors from asking applicants applying to work in connection with federal contracts about their criminal histories until after the contractor extends a conditional job offer. It also prohibits contractors from seeking such information from other sources.

The Act was enacted as part of the annual [National Defense Authorization Act](#) on December 20, 2019.

Exceptions

The Act is limited in that it does not apply to job openings unrelated to federal contract work; rather, it applies only to job openings "related to work under" a federal contract.

Further, under the Act, pre-offer criminal inquiries are allowed:

- Where criminal background checks are otherwise required by law;
- Where "a contract ... requires an individual hired under the contract to access classified information or to have sensitive law enforcement or national security duties"; and
- In connection with other positions to be identified in regulations that will be issued no later than April 2021 (16 months after enactment of the Act).

The Act directs the Office of Personnel Management to issue regulations identifying additional positions that are exempted from the law.

The Office of Personnel Management also must establish a complaint process and progressive penalties, ranging from a written warning for a first violation to payment suspension and contract termination for subsequent violations.

Other Laws, Ordinances

Currently, and after the Act goes into effect, federal contractors may need to navigate the many state and local ban-the-box laws that may apply to them. (See our articles for examples, [Colorado Enacts 'Ban the Box' Legislation to Take Effect in September 2019](#), [New Mexico Adopts Ban-the-Box, Expungement Laws](#); [New York's Westchester County to Implement Ban-the-Box Law Limiting Criminal Background Inquiries](#); [Employer Use of Criminal Records of Applicants Limited in U.S. Virgin Islands](#); [Massachusetts Adjusts Limits on Employer Inquiries into Job Applicants' Criminal History](#); and [Washington Ban-the-Box Law Limits Criminal Background Inquiries](#).)

In addition, employers should keep in mind their obligations under the Fair Credit Reporting Act if they plan to obtain criminal history reports from third-party vendors. Employers also should follow best practices, such as engaging in an individualized assessment, where appropriate, of any disclosed criminal history prior to making any employment decisions.

Ban-the-box laws affect many parts of the hiring and employment process. 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 to those involved in the recruiting and hiring processes.

Please contact a Jackson Lewis attorney with any questions or for assistance with your compliance efforts.

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