

Maryland Becomes Latest State to ‘Ban the Box’

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Maryland has joined a growing number of jurisdictions by enacting a “ban-the-box” law prohibiting employers from asking job applicants about their criminal history on the initial job application. The new Maryland law, the Criminal Record Screening Practices Act, will take effect on February 29, 2020.

The state’s Democratic-controlled legislature overrode Republican Governor Larry Hogan’s veto of the legislation ([HB 994/SB 839](#)) on January 30, 2020.

Prohibit Inquiries and Actions

Under the Act, employers with at least 15 full-time employees may not, before the first in-person interview, require an applicant for employment to disclose whether the applicant has a criminal record or has had criminal accusations brought against the applicant. The Act applies not only to traditional employment, but also more broadly to “any work for pay and any form of vocational or educational training, with or without pay,” including contractual, temporary, seasonal, or contingent work, and work assigned through a temporary or other employment agency.

Unlike some other “ban-the-box” laws that prohibit asking about an applicant’s criminal record at any time before a conditional offer of employment is made, the Act only prohibits such inquiries before the first in-person interview. Under the Act, an employer may require an applicant to disclose during the first in-person interview whether the applicant has a criminal record or has had criminal accusations brought against the applicant.

Employers also are prohibited from retaliating or discriminating against an applicant or employee as retribution for alleging a violation of the Act.

Exemptions

The Act does not apply to employers that provide programs, services, or direct care to minors or vulnerable adults. The Act also does not prohibit an employer from making a criminal record inquiry or taking other action that the employer is required or authorized to take under another federal or state law.

Enforcement and Penalties

The Commissioner of Labor and Industry is authorized to enforce the Act. If the Commissioner determines that an employer has violated this law, the Commissioner will issue an order compelling compliance. For each subsequent violation, in the Commissioner’s discretion, the Commissioner may assess a civil penalty of up to \$300.

Federal Contractor and Local Ban-the-Box Laws

The Act permits local jurisdictions to enact “ban-the-box” legislation that is more restrictive than the state law. Currently, three local jurisdictions in Maryland (Baltimore City, Montgomery County, and Prince George’s County) already have more restrictive “ban-the-box” laws with greater requirements than the state law. Federal contractors

also must comply with [more restrictive requirements](#) under the Fair Chance Act effective December 2021. Accordingly, employers should review and, if necessary, conform their current forms and practices to comply with federal, state, local laws and applicable guidances.

Jackson Lewis attorneys are available to assist employers in achieving compliance with the Act.

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