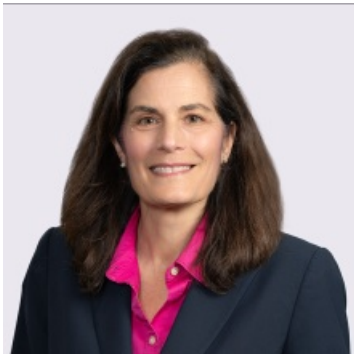


Suffolk County, New York, Follows ‘Ban the Box’ Trend

By Susan M. Corcoran & Christopher M. Valentino

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Meet the Authors



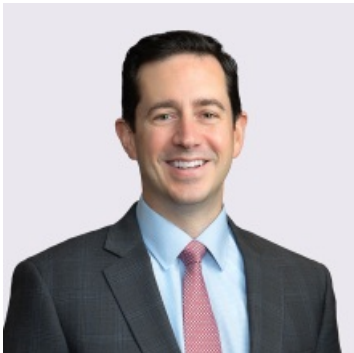
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Employment Litigation

The Suffolk County, New York, Legislature has passed the [‘Fair Employment Screening Amendment’](#) to the Suffolk County Code, prohibiting the County or any other employer having at least 15 employees from asking job applicants about their prior criminal convictions until after the first interview. The Amendment will go into effect on August 25, 2020, and will not apply retroactively.

Suffolk County soon will follow the trend of other state and local governments enacting “ban the box” legislation designed to focus on a candidate’s qualifications for a position first, before considering a possible conviction history.

Existing Discrimination Laws

Suffolk County has long-prohibited employment discrimination based on an individual’s criminal history. Prior to Suffolk County’s [March 17, 2020, “ban the box” law](#), employers were barred from [denying or terminating employment](#) on the basis of previous criminal convictions, [unless there was](#) a direct relationship between the offense and employment or employing the individual would risk property or the welfare and safety of an individual or the public.

The Suffolk County Code incorporated Article 23(A) of the Consolidated Laws of New York, which requires an employer to consider the following factors when deciding whether to refuse or terminate employment because of an individual’s prior convictions:

1. The public policy in favor of licensing or employing individuals with criminal history;
2. The specific duties and responsibilities of the position;
3. Whether the criminal offense has any bearing on the individual’s fitness or ability to perform the necessary duties;
4. How much time has passed since the criminal offense;
5. The age of the individual at the time of the criminal offense;
6. The seriousness of the offense;
7. Any information produced by or on behalf of the individual regarding their rehabilitation and good conduct;
8. The employer’s legitimate interest in protecting property and the safety and welfare of specific individuals and the general public; and
9. Any certificate of relief from disabilities or of good conduct issued to the individual that creates a presumption of rehabilitation with regard to the offense.

Fair Employment Screening Amendment

Who does it apply to?

In addition to traditional employment, the Amendment applies to vocation or educational training. Additionally, if the position requires the applicant to be licensed in a trade or profession the employer may ask any questions that would be asked by the trade or licensing body.

However, the Amendment will not apply to governmental law enforcement, schools, service agencies providing direct care or supervision to children, young adults, senior citizens, or individuals with physical or developmental disabilities, or any other position to which employment is barred by another law.

When can the employer inquire about the applicant's prior convictions?

The Fair Employment Screening Amendment plainly prohibits the employer from asking about prior convictions during the “application process,” defined as the time period commencing when the applicant first inquires about the employment sought and ends when the employer accepts the application.

The Amendment defines “interview” as any direct contact, whether in person or telephonic, with the applicant to discuss the position or the applicant’s qualifications. An employer’s initial screening call with the applicant appears to fall within this definition of an “initial” interview. Before asking whether the applicant was previously convicted of a crime, employers should check with legal counsel about the timing of such inquiry.

If interviews are not part of the employer’s hiring process, then the employer must inform the applicant whether any job offer is contingent upon a background check before employment is to begin.

Enforcement

Aggrieved individuals can contact and initiate the complaint process with the local Human Rights Commission. In addition, the law provides appropriate relief in a civil action, which includes injunctive relief, damages, and attorney’s fees.

If you have any questions, please contact the Jackson Lewis attorney with whom you regularly work.

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