

D.C. the Latest Jurisdiction to Ban the Box

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The District of Columbia is on the verge of joining the 13 other states (and numerous cities and counties throughout the country) that have enacted “Ban the Box” laws prohibiting or limiting an employer from asking job applicant’s about their criminal record.

Last week, D.C.’s Mayor Vincent Gray signed the Fair Criminal Records Screening Act of 2014, and it will become law after a 30 day review period by Congress. The new law will apply to all employers who have more than 10 employees in the District of Columbia. It makes it unlawful, with only a few exceptions, for such employer’s to ask an applicant about an arrest or a “criminal accusation” that is not then pending or did not result in a conviction.

Once an employer has extended a conditional offer employment, it may then ask about convictions, but the conditional offer may only be withdrawn for a legitimate business reason. In determining whether a legitimate business reason exists, the following factors are to be taken into account:

1. the duties and responsibilities “necessarily related” to the position,
2. the bearing, if any, of the conviction on the prospective employee’s fitness or ability to perform his duties and responsibilities,
3. the time elapsed since the conviction,
4. the age of the prospective employee when the offense was committed,
5. the frequency and seriousness of the offense, and
6. information produced by the prospective employee regarding his rehabilitation or good conduct since the commission of the offense.

Applicants who believe that a conditional offer was withdrawn or other adverse action was taken against them based on a criminal conviction, may require that the employer provide the applicant a copy of all records the employer procured in considering the applicant’s application (including criminal records) and may file a complaint with the D.C. Office of Human Rights, which can impose a penalty for violations of the law of \$1,000 to \$5,000, depending on the size of the employer. The fine

is paid over to the complaining applicant.

The new law puts D.C. employers on notice: do not ask prospective employees about criminal convictions or non-pending arrests at the application stage. And, once a conditional offer of employment is made, ask about convictions, but only at your peril. Be sure you can establish a legitimate business reason for doing so.

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