

## District of Columbia Ban-the-Box Law Traps Employers

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Employers are seeing charges mount against them under the District of Columbia's recent "**Ban the Box**" law, the *Fair Criminal Record Screening Amendment Act of 2014*, which became effective December 17, 2014.

The Act requires employers to remove criminal background questions from all job application forms and restricts employers from inquiring about an applicant's criminal background until after a conditional offer of employment has been made. (For more information, see our article, [District of Columbia Enacts Ban-the-Box Legislation Limiting Employers' Criminal Background Inquiries on Applicants](#).) Even then, the job offer can be withdrawn only for a legitimate business reason. Whether the business reason is legitimate is determined by consideration of six factors, including how the conviction would affect job performance and the time which has elapsed since the occurrence of the offense.

The Act applies to all employers with at least 10 employees located in the District, including those in other states (e.g., Virginia and Maryland) that may have 10 or more employees who work within the District.

In limited instances, such as when federal or District law requires considering an applicant's criminal history, the law is inapplicable.

### Enforcement

The District of Columbia Office of Human Rights (DCOHR) is responsible for enforcing the Act and is the final decision-maker as to whether a violation has occurred. Although the legislation precludes complainants from filing a private right of action, an aggrieved applicant can file a charge of discrimination with the DCOHR, just as an employee or applicant who alleges discrimination on any basis protected under the D.C. Human Rights Act. Once filed, charges are subject to the DCOHR's mandatory mediation procedure.

Monetary penalties may be imposed on employers for violations. Half of the penalty amount would go to the complainant and the other half to the District. Penalties of \$1,000 may be imposed on employers with 11 to 30 employees, \$2,500 on employers with 31 to 99 employees, and \$5,000 on employers with at least 100 employees. In some cases, the same individuals have filed multiple

charges alleging “ban the box” violations against different employers.

Employers also may be asked to remedy their procedures as a condition of resolving a charge.

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