

NEW YORK CITY “BANS THE BOX”

Labor & Employment Alert
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On June 29, 2015, New York City Mayor Bill de Blasio signed into law “Ban the Box” legislation, prohibiting employers from making any inquiry of, or statement to, an applicant for the purpose of eliciting information regarding his or her pending arrest or criminal conviction record. The law also prohibits employers from performing any search of publicly available records or consumer reports for the purpose of obtaining such information. In addition, the law prohibits job advertisements which contain any limitation or specification in employment based on a person’s arrest or criminal conviction.

The law allows employers to make an inquiry regarding an applicant’s arrest or criminal conviction record only *after* a conditional offer of employment has been extended. Before an employer may take adverse employment action based on an applicant’s response to such inquiry, however, the employer must:

- Provide a written copy of the inquiry to the applicant (in a manner to be determined by the New York City Human Rights Commission);
- Perform an analysis under Article 23-A of the New York Correction Law and provide a written copy of this analysis to the applicant (in a manner to be determined by the commission); and
- Provide the applicant with a reasonable time to respond, of at least three business days, and hold the position open for the applicant during that time.

The law does not apply to actions taken by an employer pursuant to any federal, state, or local law that requires criminal background checks for employment purposes or that bars employment based on criminal history.

The New York City “Ban the Box” legislation takes effect October 27, 2015.

Implications for Covered Employers

- To avoid liability, employment applications for covered employers should be revised to “ban the box.”
- Employers should not ask about criminal convictions until after a conditional offer of employment has been extended.
- Employers should avoid performing any search of publicly available records or consumer reports of applicants before a conditional offer of employment has been extended.

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- Employers should be familiar with Article 23-A of the New York Correction Law and the New York State and City Human Rights Laws as they relate to prior arrests and criminal conviction history.

For more information, please contact any of the attorneys listed.