



IMPORTANT LEGAL CONSIDERATIONS

UPDATED AUGUST 2023

BAN THE BOX

& ADVERSE ACTION SPECIAL REQUIREMENTS

The below information should NOT be construed as legal advice, guidance, or counsel. Employers should consult their own attorney about their compliance responsibilities under the Fair Credit Reporting Act (FCRA) and applicable state laws. Edge Information Management expressly disclaims any warranties or responsibilities, or damages associated with or arising out of information provided.

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Alabama

There is no ban the box law. However, a person whose criminal record, including arrest records, was expunged shall not have to disclose the fact of the record or any matter relating on an application for employment, except applicants for law enforcement or department of corrections positions.

Arizona

There is no ban the box law. However, the Arizona Civil Rights Division Pre-Employment Inquires Guide prohibits inquiries about arrests without compelling business reason. It also mandates the application include a statement that conviction will not be an absolute bar to employment.

https://www.azag.gov/sites/default/files/publications/2018-06/Pre-Employment_Inquiries.pdf

California

The State's Fair Chance Act is effective as of January 1, 2018. The Office of Administrative Law approved the California Civil Rights Council's proposed modifications to the regulations applicable to employer use of criminal history, which are effective October 1, 2023.

Definitions:

“Applicant” includes, in addition to the individuals within the scope of the general definition in section 11008(a) of 11 these regulations, individuals who have been conditionally offered employment, even if they have commenced employment when the employer undertakes a post-conditional offer review and consideration of criminal history; existing employees who have applied or indicated a specific desire to be considered for a different position with their current employer; and an existing employee who is subjected to a review and consideration of criminal history because of a change in ownership, management, policy, or practice. An employer cannot evade the requirements of Government Code section 12952 or this regulation by having an individual lose their status as an “applicant” by working before undertaking a post-conditional offer review of the individual’s criminal history.

“Employer” includes a labor contractor and a client employer; any direct and joint employer; any entity that evaluates the applicant’s conviction history on behalf of an employer, or acts as an agent of an employer, directly or indirectly; any staffing agency; and any entity that selects, obtains, or is provided workers from a pool or availability list.

Prohibition of Consideration of Criminal History Prior to a Conditional Offer of Employment.

- (a) Employers and other covered entities are prohibited from inquiring into, considering, distributing, or disseminating information related to the criminal history of an applicant until after the employer has made a conditional offer of employment to the applicant.

- (1) Prohibited consideration includes, but is not limited to, inquiring about criminal history through an employment application, background check, or internet searches.
- (2) Employers are prohibited from including statements in job advertisements, postings, applications, or other materials that no persons with criminal history will be considered for hire, such as “No Felons” or “Must Have Clean Record.”
- (3) Employers who violate the prohibition on inquiring into criminal history prior to making a conditional offer of employment may not, after extending a conditional offer of employment, use an applicant’s failure to disclose criminal history prior to the conditional offer as a factor in subsequent employment decisions, including denial of the position conditionally offered.
- (4) The prohibition against inquiring about or using any criminal history before a conditional offer of employment has been made does not apply in the following circumstances:
 - A) If the position is one for which an employer is otherwise required by law to conduct a conviction history background check where the employer is a state or local agency;
 - (B) If the position is with a criminal justice agency, as defined in Section 13101 of the Penal Code;
 - (C) If the position is as a Farm Labor Contractor, as described in Section 1685 of the Labor Code;
 - (D) If the position is one that an employer or an employer’s agent is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. Federal law, for purposes of this provision, includes rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(26).
- (5) For the exemptions set forth in subsection (a)(4)(A) and (a)(4)(D) to apply, the employer or the employer’s agent must be required by law to conduct the criminal background check. A state, federal, or local law requiring another entity, such as an occupational licensing board, to conduct a criminal background check will not exempt an employer from the prohibitions set forth in this subsection and other requirements of this section.
- (6) If an applicant raises their criminal history voluntarily prior to receiving a conditional offer, the employer must not consider any information the employer is prohibited from considering under subsection (b). In addition, an employer is prohibited from considering any other conviction history information until after making a conditional offer of employment, unless subsection (a)(4) applies.

Requirements if an Employer Intends to Deny an Applicant the Employment Conditionally Offered Because of the Applicant’s Conviction History.

(1) **Initial Individualized Assessment.** If an employer intends to deny an applicant the employment position they were conditionally offered based solely or in part on the applicant’s conviction history, the employer must first conduct an individualized assessment – a reasoned, evidence-based determination of whether the applicant’s conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position.

The individualized assessment must include, at a minimum, consideration of the following factors:

(i) The nature and gravity of the offense or conduct; Consideration of this factor may include but is not limited to:

- (I) The specific personal conduct of the applicant that resulted in the conviction;
- (II) Whether the harm was to property or people;
- (III) The degree of the harm (e.g., amount of loss in theft);
- (IV) The permanence of the harm;
- (V) The context in which the offense occurred;
- (VI) Whether a disability, including but not limited to a past drug addiction or mental impairment, contributed to the offense or conduct, and if so, whether the likelihood of harm arising from similar conduct could be sufficiently mitigated or eliminated by a reasonable accommodation, or whether the disability has been mitigated or eliminated by treatment or otherwise;
- (VII) Whether trauma, domestic or dating violence, sexual assault, stalking, human trafficking, duress, or other similar factors contributed to the offense or conduct; and/or
- (VIII) The age of the applicant when the conduct occurred.

(ii) The time that has passed since the offense or conduct and/or completion of the sentence. Consideration of this factor may include but is not limited to:

- (I) The amount of time that has passed since the conduct underlying the conviction, which may significantly predate the conviction itself; and/or
- (II) When the conviction led to incarceration, the amount of time that has passed since the applicant’s release from incarceration.

(iii) The nature of the job held or sought. Consideration of this factor may include but is not limited to:

- (I) The specific duties of the job;
- (II) Whether the context in which the conviction occurred is likely to arise in the workplace; and/or
- (III) Whether the type or degree of harm that resulted from the conviction is likely to occur in the workplace.

To the extent that any evidence of rehabilitation or mitigating circumstances, is voluntarily provided by the applicant, or by another party at the applicant’s request, before or during the

initial individualized assessment, that evidence must be considered as part of the initial individualized assessment.

Notice of Preliminary Decision and Opportunity for Applicant Response.

If, after conducting an initial individualized assessment, the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from the employment conditionally offered, the employer shall notify the applicant of the preliminary decision in writing. The written notice to the applicant may, but is not required to, justify, or explain the employer's reasoning for making the decision. **However, the notice to the applicant must include all of the following:**

- (A) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer.
- (B) A copy of the conviction history report utilized or relied on by the employer, if any (such reports include, but are not limited to consumer reports, credit reports, public records, results of internet searches, news articles, or any other writing containing information related to the conviction history that was utilized or relied upon by the employer)
- (C) Notice of the applicant's right to respond to the notice before the preliminary decision rescinding the offer of employment becomes final.
- (D) An explanation informing the applicant that, if the applicant chooses to respond, the response may include submission of either or both of the following types of evidence: evidence challenging the accuracy of the conviction history report that is the basis for the preliminary decision to rescind the offer, or evidence of rehabilitation or mitigating circumstances.
 - (i) Evidence of rehabilitation or mitigating circumstances may include but is not limited to the items listed below. Any such evidence of rehabilitation or mitigating circumstances is optional and may only be voluntarily provided by the applicant or by another party at the applicant's request.
 - (I) The length and consistency of employment history before and after the offense or conduct;
 - (II) The facts or circumstances surrounding the offense or conduct;
 - (III) The applicant's current or former participation in self-improvement efforts, including but not limited to school, job training, counseling, community service, and/or a rehabilitation program, including in-custody programs;
 - (IV) Whether trauma, domestic or dating violence, sexual assault, stalking, human trafficking, duress, or other similar factors contributed to the offense or conduct;
 - (V) The age of the applicant when the conduct occurred;
 - (VI) Whether a disability, including but not limited to a past drug addiction or mental impairment, contributed to the offense or conduct, and, if so, whether the likelihood of harm arising from similar conduct could be sufficiently mitigated or eliminated by a reasonable

accommodation, or whether the disability has been mitigated or eliminated by treatment or otherwise;

(VII) The likelihood that similar conduct will recur;

(VIII) Whether the applicant is bonded under a federal, state, or local bonding program; (IX) The fact that the applicant is seeking employment; and/or

(X) Successful completion, or compliance with the terms and conditions, of probation or parole.

(ii) Documentary evidence may include but is not limited to the items listed below. Any such evidence of rehabilitation or mitigating circumstances is optional and may only be voluntarily provided by the applicant or by another party at the applicant's request.

(I) Certificates or other documentation of participation in, enrollment in, or completion of an educational, vocational, training, counseling, community service, or rehabilitation program, including in-custody programs;

(II) Letters from current or former teachers, counselors, supervisors, co-workers, parole or probation officers, or others who know the applicant;

(III) Police reports, protective orders, and/or documentation from healthcare providers, counselors, case managers, or victim advocates who can attest to the applicant's status as a survivor of domestic or dating violence, sexual assault, stalking, or comparable offenses;

(IV) Documentation confirming the existence of a disability; and/or

(V) Any other document demonstrating rehabilitation or mitigating circumstances.

(iii) An employer is prohibited from the following actions:

(I) Refusing to accept additional evidence voluntarily provided by an applicant, or by another party at the applicant's request, at any stage of the hiring process (including prior to making a preliminary decision to rescind the applicant's job offer);

(II) Requiring an applicant to submit any of the additional evidence described in this subsection at any time in the hiring process;

(III) Requiring an applicant to provide a specific type of documentary evidence (e.g., a police report as evidence of domestic or dating violence), or disqualifying an applicant from the employment conditionally offered for failing to provide any specific type of documents or other evidence;

(IV) Requiring an applicant to disclose their status as a survivor of domestic or dating violence, sexual assault, stalking, or comparable statuses; and/or

(V) Requiring an applicant to produce medical records and/or disclose the existence of a disability or diagnosis.

Notice of the deadline for the applicant to respond if the applicant chooses to do so.

(i) The deadline for providing a response must be at least five business days from the date of receipt of the notice. An employer may offer an applicant more than five business days to respond to the notice regarding its preliminary decision.

(ii) If notice is transmitted through a format that does not provide a confirmation of receipt, such as a written notice mailed by an employer without tracking delivery enabled, the notice shall be deemed received five calendar days after the mailing is deposited for delivery for California addresses, ten calendar days after the mailing for addresses outside of California, and twenty calendar days after mailing for addresses outside of the United States. (iii) If notice is transmitted through email, the notice shall be deemed received two business days after it is sent.

Reassessment.

The employer shall consider any information submitted by the applicant before making a final decision regarding whether or not to rescind the conditional offer of employment. When considering evidence of rehabilitation or mitigating circumstances provided by the applicant, or by another party at the applicant's request, the employer may consider, but is not limited to, the following factors:

- (A) When the conviction led to incarceration, the applicant's conduct during incarceration, including participation in work and educational or rehabilitative programming and other prosocial conduct;
- (B) The applicant's employment history since the conviction or completion of sentence;
- (C) The applicant's community service and engagement since the conviction or completion of sentence, including but not limited to volunteer work for a community organization, engagement with a religious group or organization, participation in a support or recovery group, and other types of civic participation; and/or
- (D) The applicant's other rehabilitative efforts since the completion of sentence or conviction or mitigating factors not captured in the above subfactors.

Final Decision.

If the employer makes a final decision to rescind the conditional offer and deny an application based solely or in part on the applicant's conviction history, the employer shall notify the applicant in writing. The notice to the applicant must include the following:

- (A) The final denial or disqualification decision reached. The employer may also include, but is not required to include the justification or an explanation of the employer's reasoning for reaching the decision that it did;
- (B) Any procedure the employer has for the applicant to challenge the decision or request reconsideration; and
- (C) The right to contest the decision by filing a complaint with the Civil Rights Department.

For additional information, please visit the California Department of Fair Employment and Housing website: <https://www.dfeh.ca.gov/fair-chance-act/>

Compton

For contractors doing business with the City, criminal background check must be delayed until after conditional offer of employment is made.

Los Angeles (City)

Effective January 22, 2017, the Los Angeles Fair Chance Initiative for Hiring, limits employers' consideration of the criminal history of job applicants. Under the new law, employers located in Los Angeles are prohibited from inquiring into or seeking a job applicant's criminal history unless and until a conditional offer of employment has been made to the applicant. This includes prohibiting questions on an initial employment application regarding criminal history as well as questions during an in-person interview, as well as conducting any sort of criminal history background check prior to the conditional offer. Employers also have posting requirements to inform applicants of the provisions of the ordinance.

The employer may not take any adverse action (such as a denial of employment) unless the employer completes and provides the applicant with a written assessment of the applicant's criminal history "that effectively links the specific aspects of the applicant's criminal history with risks inherent in the duties of the employment position sought by the applicant." The employer is also required to provide the applicant five days to submit information refuting the findings of the assessment and must provide the applicant with written notice of the adverse action as well.

Employers are also required to retain records of such adverse action assessments for a period of three years from the date of the initial application.

The ordinance does provide several exceptions to the prohibition of criminal history inquiries, namely if the employer is required by law to inquire about criminal history, if the position requires the applicant to carry a gun, or if other laws prohibit persons with criminal histories to hold the position in question.

For additional information, please visit the City of Los Angeles City Clerk website:
<https://bca.lacity.org/fair-chance>

Richmond

For vendors/contractors doing business with the City, employers must remove any question regarding prior criminal convictions from their printed and/or on-line employment application forms and refrain from inquiring into an applicant's conviction history unless the position has been deemed "sensitive." If a background check is required by federal law, it may be asked later in the process.

San Francisco, California (City and County)

The San Francisco Board of Supervisors passed the Fair Chance Ordinance (FCO) in February 2014. The Fair Chance Ordinance was amended in April 2018 and went into effect October 1, 2018. The amendment expands the scope of the ordinance to cover all employers with five (5) or more employees. The Fair Chance Ordinance (FCO) requires employers to follow strict rules regarding applicants' and employees' arrest and conviction record(s) and related information. Employers with 5 or more employees (total worldwide) and City contractors, subcontractors, and leaseholders are covered by the FCO.

The Fair Chance Ordinance (FCO) prohibits covered employers from asking about arrest or conviction records until after a conditional offer of employment. The FCO also prohibits covered employers from ever considering the following:

- An arrest not leading to a conviction, except for unresolved arrests.
- Participation in a diversion or deferral of judgment program.
- A conviction that has been dismissed, expunged, otherwise invalidated, or inoperative.
- A conviction in the juvenile justice system.
- An offense other than a felony or misdemeanor, such as an infraction.
- A conviction that is more than 7 years old (unless the position being considered supervises minors or dependent adults).
- A conviction for decriminalized conduct, including the non-commercial use and cultivation of cannabis.

In addition, the Ordinance requires covered employers to:

- State in all job solicitations/ads that qualified applicants with arrest and conviction records will be considered for the position in accordance with this ordinance.
- Conspicuously post the Official FCO Notice in every workplace/jobsite under the employer's control.

Before taking adverse action such as failing/refusing to hire, discharging, or not promoting an individual based on a conviction history or unresolved arrest, give the individual an opportunity to present evidence that the information is inaccurate, the individual has been rehabilitated, or other mitigating factors (following procedures outlined in Police Code Section 4909 or Administrative Code Section 12T.4).

In making a decision based on an applicant's or employee's Conviction History, an Employer shall conduct an individualized assessment, considering only Directly-Related Convictions, the time that has elapsed since the Conviction or Unresolved Arrest, and any evidence of inaccuracy or Evidence of Rehabilitation or Other Mitigating Factors.

The individual assessment should be based upon the following factors:

- Whether, and if so when, the applicant or employee was asked to voluntarily disclose information about his or her Conviction History;
- Whether, and if so when, a Background Check Report was obtained by the Employer;
- If the applicant or employee requested a copy of the Background Check Report and any items of Conviction History appeared on the report, whether the applicant or employee submitted any evidence of inaccuracy or Evidence of Rehabilitation or other Mitigating Factors;
- Whether the Employer gave consideration to any information by the applicant or employee of the report's inaccuracy or to any Evidence of Rehabilitation Or Other Mitigating Factors;
- Whether the Employer gave any consideration to the amount of time elapsed since the conviction or release from incarceration or conduct that is the subject of an Unresolved Arrest;
- Whether the employment position at issue would give the applicant or employee the opportunity to commit the same or similar offenses;
- Whether the circumstances leading to the conduct for which the applicant or employee was convicted or that is the subject of an Unresolved Arrest would recur in the employment position at issue.

If an Employer intends to base an Adverse Action on an item or items in the applicant or employee's Conviction History, prior to taking any Adverse Action the Employer shall provide:

- **The applicant or employee with a copy of the Background Check Report, if any, and**
- **Shall notify the applicant or employee of the prospective Adverse Action and the items forming the basis for the prospective Adverse Action.**

If, within seven days of the date that the notice described above is provided by the Employer to the applicant or employee, the applicant or employee gives the Employer notice, orally or in writing, of evidence of the inaccuracy of the item or items of Conviction History or any Evidence of Rehabilitation or Other Mitigating Factors, the Employer shall delay any Adverse Action for a reasonable period after receipt of the information and during that time shall reconsider the prospective Adverse Action in light of the information.

Upon taking any final Adverse Action based upon the Conviction History of an applicant or employee, an Employer shall notify the applicant or employee of the final Adverse Action.

An Employer shall retain records of employment, application forms, and other pertinent data and records required under this Article, for a period of three years, and shall allow the OLSE access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Article. An Employer shall provide information to the OLSE, or the OLSE's designee, on an annual basis as may be required to verify the Employer's compliance with this Article.

Please note: Where federal or state law imposes a criminal history requirement that conflicts with a requirement of the Fair Chance Ordinance, the federal or state law will apply.

For additional information, please visit the Office of Labor Standards Enforcement website: <http://sfgov.org/olse/fair-chance-ordinance-fco>

Colorado

Effective September 1, 2019, for employers with 11 or more employees, and effective September 1, 2021 for all employers. Employers may not inquire about an applicant's criminal history on an initial application or advertise that a person with criminal history may not apply. An employer may obtain a job applicant's publicly available criminal background at any time. Criminal history includes the record of arrests, charges, pleas, or conviction for any misdemeanor or felony at the federal, state, or local level.

The Colorado Chance to Compete Act does not apply to the following:

- State, any local government, or any quasi-government entity or political subdivision of the state.
- Federal, state, or local law or regulation states that someone with a specific criminal history cannot work in the position sought.
- The employer designates the position will participate in a federal, state, or local government program to encourage the employment of people with criminal histories.
- Employer is required by federal, state, or local law or regulation to conduct a criminal history record check for that position, regardless of whether the position is for an employee or an independent contractor.

Connecticut

Effective January 1, 2017, employers may not inquire about a prospective employee's prior arrests, criminal charges or convictions on an initial employment application unless:

- Employer is required to do so by an applicable state or federal law.
- Security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment.

Even if an applicable exception applies, an employment application form that contains any question concerning the criminal history of the applicant shall contain a notice, in clear and conspicuous language:

(1) That the applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased.

(2) That criminal records subject to erasure are records pertaining to a finding of delinquency or that a child was a member of a family with service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or nolle, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon,

(3) that any person whose criminal records have been erased shall be deemed to have never been arrested within the meaning of the general statutes with respect to the proceedings so erased and may so swear under oath.

An Act Deterring Age Discrimination In Employment Applications prohibits Connecticut employers with at least three employees from inquiring into the age of prospective employees. The new law goes into effect on **October 1, 2021**. Under the new law, employers (directly or through a third party) may not ask a prospective employee about the following information on an initial employment application:

- Age;
- Date of Birth;
- Date of attendance at an educational institution; or
- Date of graduation from an educational institution.

An employer, however, may request or require such information if:

- The request or requirement is based on a bona fide occupational qualification or need; or
- The employer has a need for such information to comply with applicable state or federal laws.

New Haven

Employers who are vendors/contractors doing business with the city can only conduct a criminal background check only after job applicant is selected for the position and has received a conditional offer of employment. Prior to conducting the background check the employer must:

- Employer must provide written notification that it will take place.
- Availability of opportunity to rebut a decision if conditional offer of employment withdrawn.

- Types of specific evidence the applicant can present during a rebuttal.

Hartford

Employers who are vendors/contractors doing business with the city may not require disclosure of any arrest or criminal accusation which is not then pending, and which did not result in a conviction. An applicant's criminal record may not be revealed to individual(s) making hiring decision until a conditional offer of employment has been made. Job applications may not contain a "box" or inquiry regarding an applicant's prior convictions.

Delaware

There is no ban the box law. However, an individual whose record has been expunged does not have to disclose the record to the employer for any reason.

Florida

Employers may not inquire into sealed or expunged criminal history records (exceptions for positions with schools and certain government contract positions having direct contact with children, the disabled or the elderly).

Gainesville

Effect 12/22/2022, The City of Gainesville passed the Fair Chance Hiring Ordinance (Ordinance No. 2022-617). Applying to any employer with 15 or more employees, it prohibits any questions regarding an applicant's criminal history in the application process until a conditional offer of employment has been made. Once a conditional offer of employment is made, a background report may be run; however, an employer can only take adverse action against an applicant based on their criminal history if the employer has determined that the applicant is unsuitable for the job based on an individual assessment. The penalty for violation may only be enforced by the city. The first violation is \$500, with half going to the Complainant. Each additional violation is \$500.

If an employer chooses to take adverse action based on an applicant's criminal history, the employer must inform the applicant of the decision, provide the applicant with a copy of the criminal history relied upon, provide the applicant with a reasonable opportunity to provide additional information or context, including information related to any rehabilitation undertaken, a statement that the decision was made based on the applicant's criminal history. Importantly, the Ordinance also requires the following statement in the notice.

This notice is provided in accordance with the City of Gainesville Code of Ordinances, Chapter 14.5, Section 14.5-181, which regulates the process and timing of criminal background checks conducted on job applicants.

Georgia

An employer may not obtain records of arrests, charges, and sentences for crimes relating to first offenders (exceptions for employers who are schools, childcare centers, and facilities for the elderly, developmentally disabled or mentally ill).

Hawaii

Employers may not inquire about a prospective employee's criminal history until after the prospective employee has received a conditional offer of employment. Inquiries regarding arrest records or final judgments required to be kept confidential by the courts not permitted. Inquiries regarding criminal conviction records in the past 10 years, excluding periods of incarceration, permitted only if they bear a rational relationship to the duties and responsibilities of the position.

The limitation to the most recent ten-year period, excluding the period of incarceration, does not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law.

Illinois

Effective March 23, 2021 the new law (Senate bill 1480), limits employers' ability to consider criminal convictions in making hiring and employment decisions, imposes new requirements for reporting workforce demographics to the state, and requires employers to obtain a certification that they are complying with federal and state equal pay laws.

(775 ILCS 5/2-103.1) Conviction Record

(A) Unless otherwise authorized by law, it is a civil rights violation for any employer, employment agency or labor organization to use a conviction record, as defined under subsection (G-5) of Section 1-103, as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment (whether "disqualification" or "adverse action"), unless:

- (1) there is a substantial relationship between one or more of the previous criminal offenses and the employment sought or held; or
- (2) the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

For the purposes of this subsection (A), "substantial relationship" means a consideration of whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position.

(B) Factors considered. In making a determination pursuant to subsection (A), the employer shall consider the following factors:

- (1) the length of time since the conviction;
- (2) the number of convictions that appear on the conviction record;
- (3) the nature and severity of the conviction and its relationship to the safety and security of others;
- (4) the facts or circumstances surrounding the conviction;
- (5) the age of the employee at the time of the conviction; and
- (6) evidence of rehabilitation efforts.

(C) Interactive assessment required for disqualifying conviction. If, after considering the mitigating factors in subsection (B), the employer makes a preliminary decision that the employee's conviction record disqualifies the employee, the employer shall notify the employee of this preliminary decision in writing.

(1) Notification. The notification shall contain all of the following:

- (a) notice of the disqualifying conviction or convictions that are the basis for the preliminary decision and the employer's reasoning for the disqualification;**
- (b) a copy of the conviction history report, if any; and**
- (c) an explanation of the employee's right to respond to the notice of the employer's preliminary decision before that decision becomes final. The explanation shall inform the employee that the response may include, but is not limited to, submission of evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence in mitigation, such as rehabilitation.**

(2) Employee response. The employee shall have at least 5 business days to respond to the notification provided to the employee before the employer may make a final decision.

(3) Final decision. The employer shall consider information submitted by the employee before making a final decision. If an employer makes a final decision to disqualify or take an adverse action solely or in part because of the employee's conviction record, the employer shall notify the employee in writing of the following:

(a) notice of the disqualifying conviction or convictions that are the basis for the final decision and the employer's reasoning for the disqualification;

(b) any existing procedure the employer has for the employee to challenge the decision or request reconsideration; and

(c) the right to file a charge with the Department.

Chicago

Municipal Code 6-10-054.

(a) Employers shall not inquire into or use arrest record as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment.

(1) This subsection (a) does not prohibit a potential employer from requesting or utilizing sealed felony conviction information obtained from the Illinois State Police under the provisions of Section 3 of the Criminal Identification Act or under other State or federal laws or regulations that require criminal background checks in evaluating the qualifications and character of an employee or a prospective employee.

(2) The prohibition against the use of an arrest record shall not be construed to prohibit an employer from obtaining or using other information which indicates that a person actually engaged in the conduct for which the individual was arrested.

(b) Employers shall not use a person's conviction record as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment, unless:

(1) applicable law excludes applicants with certain criminal convictions from the relevant position;

(2) a standard fidelity bond or an equivalent bond is required for the relevant position, and an applicant's conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond, in which case an employer may include a question or otherwise inquire whether the applicant has ever been convicted of any of those offenses; or

(3) there is a substantial relationship between one or more of the criminal offenses in the person's conviction record and the employment sought or held; or

(4) the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

For the purposes of this subsection (a), "substantial relationship" means a consideration of whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position.

(c) Factors considered. In making a determination pursuant to subsection (a)(3) and (a)(4), the employer shall consider the following factors:

- (1) the length of time since the conviction;
- (2) the number of convictions that appear on the conviction record;
- (3) the nature and severity of the conviction and its relationship to the safety and security of others;
- (4) the facts or circumstances surrounding the conviction;
- (5) the age of the employee at the time of the conviction; and
- (6) evidence of rehabilitation efforts.

(d) In the event any employer, makes a preliminary decision that the applicant's or employee's conviction record disqualifies the applicant or employee, the employer shall notify the applicant or employee of this preliminary decision in writing.

(1) Notification. The notification shall contain all of the following:

- (A) notice of the disqualifying conviction or convictions or anything else in the conviction record that is the basis for the preliminary decision and the employer's reasoning for the disqualification;**
- (B) a copy of the conviction record, if any; and**
- (C) an explanation of the applicant's or employee's right to respond to the notice of the employer's preliminary decision before that decision becomes final. The explanation shall inform the employee that the response may include, but is not limited to, submission of evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence in mitigation, such as rehabilitation.**

(2) Employee response. The applicant or employee shall have at least 5 business days to respond to the notification provided to the applicant or employee before the employer may make a final decision.

(3) Final decision. The employer shall consider information submitted by the applicant or employee before making a final decision. If an employer makes a final decision to disqualify or take an adverse action solely or in part because of the applicant's or employee's conviction record the employer shall notify the applicant or employee in writing of the following:

- (A) notice of the disqualifying conviction or convictions or anything else in the conviction record that is the basis for the final decision and the employer's reasoning for the disqualification;**
- (B) any existing procedure the employer has for the applicant or employee to challenge the decision or request reconsideration; and**

(C) the right to file a complaint with the Chicago Commission on Human Relations.

Indiana

If a person's records are expunged (or if a court orders a person's arrest records restricted), the person must be treated for all purposes as if he/she had not been arrested for or convicted of the felony or misdemeanor recorded in the expunged (or restricted) records, and may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the expunged (or restricted) records.

Iowa

The Iowa Workforce Development Successful Interviewing Guide states application forms that ask about conviction records should include a statement to the effect that whether a conviction will disqualify an applicant depends on the nature of the offense, the nature of the job, and the length of time since the conviction and incarceration.

Waterloo

"Unlawful discriminatory practice" for employer to make any inquiry regarding, or to require any person to disclose or reveal, any convictions, arrests, or pending criminal charges prior to a conditional offer of employment.

If the applicant voluntarily discloses any information regarding his or her criminal record at the interview, the employer may discuss the criminal record disclosed by the applicant.

"Employer" includes any person, partnership, company, corporation, labor organization or association which regularly employs fifteen (15) or more persons within the City of Waterloo. Job placement and referral agencies and other employment agencies are not employers for purposes of this ordinance, except when hiring for their own internal needs, and private schools are also not employers for purposes of this ordinance. Amendment to ordinance clarifies employers are required to follow federal and state laws on background checks.

Kansas

Employers may not inspect or inquire into criminal records unless applicant or employee signs release. A person with an expunged criminal record may state that there has never been an arrest or conviction for the offense (absent specific exceptions for employment in gaming and law enforcement).

Kansas Commission on Civil Rights discourages employers from pre-employment inquiries about arrests and suggests that inquiries into conviction records are acceptable only when substantially related to an applicant's ability to perform job duties.

Kentucky- Louisville

Vendors with the Louisville Metro Government who are bidding on a contract over \$2,500 may not inquire about applicants' criminal history or ask about a criminal background on employment applications.

Louisiana

Effective August 1, 2021, employers with 20 or more employees in the state prohibits the consideration of arrest records or charges that did not result in a conviction if the information was “received in the course of a background check.” This new “Fair Chance” law adopts the Equal Employment Opportunity Commission’s (EEOC) framework for determining whether a conviction is job-related as set out in its 2012 Enforcement Guidance on consideration of convictions and arrests. Employers now must conduct an individualized assessment of whether an applicant’s criminal history has a direct and adverse relationship with the specific duties of the job.

New Orleans

Effective March 1, 2019, City contractors are prohibited from asking about potential employees' criminal history on initial job applications and must conduct at least one in-person interview before inquiring about any past convictions. Applies to private employers with city contracts, cooperative endeavor grants, or grant funding. The measure applies whenever the City signs a new contract or renews one of its existing agreements.

Maine

Effective October 18, 2021, Maine’s Ban the Box law prohibits employer from inquiring about criminal history until late in the hiring process. It prevents employers inquiring about criminal history on job applications. It further forbids specifying by any means that criminal history will not be considered before otherwise confirming that an applicant is qualified for the position. Violations of these provision will be punishable by a fine of between \$100 to \$500 per violation. Enforcement will be conducted by the Maine Department of Labor.

Maryland

Employer with fifteen (15) or more full-time employees are prohibited from requiring an applicant to disclose whether criminal record or criminal accusations before first in-person interview. Exception where employer expressly authorized to do so by applicable federal or state law or if employer provides programs, services, or direct care to minors or to vulnerable adults.

Baltimore

Baltimore bans the box on job applications that ask whether the applicant has a criminal history. This restriction applies only to employers with at least ten (10) full-time workers.

Before a conditional offer extended, employers may not:

- Require the applicant to disclose or reveal whether he/she has a criminal record or criminal accusations brought against him/her.
- Conduct a criminal-record check on the applicant.
- Make any inquiry of the applicant or others regarding whether the applicant has a criminal record or criminal accusations brought against him/her.

Criminal history inquiries are permitted where required or authorized by an applicable federal, state, or city law or regulation. They are also permitted in facilities servicing minors or vulnerable adults.

Montgomery County, MD

Effective February 19, 2021, the Ban-The Box- Law will apply to all employers; not just those with fifteen (15) or more employees. The law has been amended and employers will now be able to ask about convictions only after a conditional offer of employment has been made. In addition, employers cannot ask about, or base a hiring or promotion decision on:

- Arrests that did not result in conviction (previously, employers could ask about and rely on arrests)
- A first conviction of trespass, disturbance of the peace, or assault in the second degree
- Any misdemeanor conviction where at least three years have passed since the date of the conviction and the date of any period of incarceration
- A confidential juvenile record or an expunged record

Under the already existing law, employers must make an individualized assessment based on specified criteria when making an employment decision based on a conviction record, and they must provide prior notice to an applicant when rescinding a conditional job offer based on a prior conviction.

In addition, there are exemptions to the current and the amended restrictions for:

- Employers who are authorized to request arrest and/or conviction information under law
- Certain County agencies (Police, Fire and Rescue, Department of Corrections and Rehabilitation)
- Employers providing programs, services or direct care to minors or vulnerable adults

- Employers hiring for positions requiring federal government security clearance
- An applicant or employee may file a complaint with the County Office of Human Rights. Employers found to have violated the law may be required to pay up to \$1000 civil penalty for each violation.

For additional information, please visit Montgomery County Office of Human Rights website: <https://www.montgomerycountymd.gov/humanrights/divisions/compliance.html>

Prince Georges County, MD

Effective: January 20, 2015, **Bill CB-78-2014** states that an employer is not permitted to inquire about a job applicant's arrest or conviction record until after a first job interview. In making an employment decision based on a person's record, employers are only allowed to consider offenses that specifically demonstrate unfitness for the desired position. **If an employer decides to rescind a job offer based on a record, they must notify the applicant of that decision, specify the information on which the decision is based, and provide a copy of the background check to the applicant.**

For additional information, please visit Prince George's Legislative Branch website: <https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=2467190&GUID=4A27F34A-18C2-4286-B501-A4F98D43ED3F&Options=ID|Text|&Search=CB-078-2014>

Massachusetts

Employers may not require applicants to check a box on *initial application form*. Employer may not request/require applicant to provide a copy of his criminal offender record information. Employers are also barred from inquiries regarding:

- an arrest, detention, or disposition not resulting in conviction.
- sealed or expunged records.
- first convictions for certain misdemeanors (drunkenness, simple assault, speeding, minor traffic violations -- any moving violation other than reckless driving, driving to endanger, and motor vehicle homicide, affrays or disturbance of the peace).
- misdemeanor convictions occurring 3 or more years before the date of the employment application, unless individual convicted of any offense within the preceding 3 years.

An employer may inquire about any convictions on an application form where any federal or state law creates a mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses, or (ii) where an employer is subject to an obligation imposed by any federal or state law or regulation not to employ an individual convicted of 1 or more types of criminal offenses.

Employers who inquire about conviction on employment application should add statement such as:

"Do NOT answer this question during the initial application stage or prior to any interview. Massachusetts law prohibits employers from making inquiries regarding applicants' criminal history information in an initial written application form. You may be required to provide some criminal history information later in the hiring process."

In addition, any form used by an employer that seeks information about an applicant's criminal history must include the following statement about expunged records, in addition to the statement already required concerning sealed records:

"An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 of the General Laws may answer 'no record' with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 of the General Laws may answer 'no record' to an inquiry herein relative to prior arrests, criminal court appearances, juvenile court appearances, adjudications or convictions."

Boston

For vendors, contractors, or suppliers of goods or services to the City, criminal history inquiries are not permitted on a job application. Employer must review the qualifications of an applicant and determine that an applicant is otherwise qualified for the relevant position before conducting a CORI check.

Cambridge

For vendors and contractors to the City, employers must wait to conduct a criminal background check until the job applicant is found to be "otherwise qualified" for the position.

Worcester

For vendors and contractors doing business with the City, employers may not inquire into an applicant's criminal history on any initial employment application and may perform a background check only once an applicant is identified as otherwise qualified. Background checks may only be performed when mandated by law, or when employer "determines that the position in question is of such sensitivity" that a review of criminal history is warranted.

Michigan

Employer may not request information regarding a misdemeanor arrest, detention, or disposition without conviction. A person is not guilty of perjury or otherwise for giving a false statement by failing to recite or acknowledge information the person has a civil right to withhold. This section does not apply to information relative to a felony charge before conviction or dismissal.

Detroit

Under the local law, vendors or contractors doing business with the City must remove the conviction history question from job applications, though they may otherwise take into consideration an applicant's criminal history during hiring process, and/or choose to notify applicants that laws and City policies may disqualify an individual with a particular criminal conviction from employment based on the requirements of a particular position.

Minnesota

Employers may not inquire into or consider or require disclosure of the criminal record or criminal history of an applicant until the applicant has been selected for an interview by the employer or, if there is not an interview, before a conditional offer of employment is made to the applicant.

This does not apply to employers who have a statutory duty to conduct a criminal history background check or otherwise consider criminal history during hiring process. It also does not prohibit an employer from notifying applicants that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.

Missouri

There is no statewide ban the box law, however, the Missouri Commission on Human Rights states that employers should not inquire about matters which may disproportionately exclude members of protected groups, unless the employer can show that the inquiry is job-related and consistent with business necessity.

Columbia

Employers may not seek information on employment application whether applicant has ever been arrested for, charged with, or convicted of any crime. Employer also may not inquire or otherwise seek information about criminal history until after conditional job offer is made. Ordinance includes exceptions for certain positions that bar employees with certain types of criminal convictions.

Kansas City

Unlawful for employer with six (6) or more employees to inquire about applicant's criminal history until after it has been determined that individual is otherwise qualified for position, and only after applicant has been interviewed for position. Such inquiry may be made of all applicants who are within final selection pool of candidates from which job will be filled. These requirements do not apply to positions where employers are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

St. Louis

Effective 01/01/2021, employers with ten (10) or more employees shall not inquire about applicant's criminal history until after determination that applicant is otherwise qualified for position, and only after applicant has been interviewed for position, except that inquiry may be made of all applicants who are in final selection pool from which position will be filled. Employer may not include statements in electronic or hard-copy job applications or advertisements excluding applicants on basis of criminal history. Employer also prohibited from avoiding compliance by seeking publicly available information concerning job applicants' criminal history. Exception to these prohibitions exists where federal, state, or local laws or regulations preclude employers from employing individuals with certain criminal histories.

New Hampshire

In any application for employment or license a person may be questioned about a previous criminal record only in terms such as "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?"

New Jersey

Under the Opportunity to Compete Act, employers with fifteen (15) or more employees may not perform criminal background checks or make any inquiry (whether through application, orally, or in writing) about criminal records (including expunged records) until after initial interview. If applicant voluntarily discloses information about criminal history during initial application process, employer may inquire about applicant's criminal record(s). With limited exception, law bars employers from publishing job advertisement that explicitly indicates employer will not consider applicant who has been arrested or convicted of crime.

Atlantic City

For vendors or contractors doing business with the City. Employment applications may not contain a box or inquiry regarding an applicant's prior criminal history. Employers may not otherwise inquire about conviction history until after determination that individual is "otherwise qualified" for the position. After conditional offer of employment, employer must advise applicant in writing that criminal history check will occur, notify him/her about the opportunity to rebut decision to retract conditional offer, and provide the type of evidence the individual can use in rebuttal.

New Mexico

Private employers may not inquire into an applicant's history of arrest or conviction on the employment application, though they may consider an applicant's conviction after review of the application and upon discussion of employment with the applicant.

New York

Employers may not make any inquiry about any arrest or criminal accusation not then pending which was followed by a termination of that criminal action or proceeding in favor of such individual, or by a youthful offender adjudication, or by a conviction for a sealed violation, in connection with employment. Applicants are not required to divulge any of the above-stated arrest or sealed information.

If an investigative consumer report was requested with respect to an offer of employment, the employer must provide the individual of the report with a copy of Article 23-A of the Correction Law governing employment of persons previously convicted. If criminal history information is reported in a consumer report, an employer must provide the consumer with a copy of Article 23-A of the Corrections Law. Every employer also must post a copy of Article 23-A of the Correction Law and any regulations relating to the employment of persons previously convicted of one or more criminal offenses. The posting must be located in a place accessible to employees in a visually conspicuous manner. As a best practice, employers may want to provide a copy of Article 23-A of the Correction Law each time a consumer report is requested.

Buffalo

City vendors (even those outside the city) and private employers with at least 15 employees within the city may not inquire about criminal convictions during application process. Employer may not make inquiry or require disclosure of criminal conviction before first interview. If no interview, employer must inform applicant whether check will be made before the start of employment. Exception where certain convictions are bar to employment by law.

New York City

Effective October 27, 2015, employers with four (4) or more employees in New York City may not ask applicants about convictions on applications and may ask about criminal history and conduct background check only after extending a conditional offer.

After a conditional offer, an employer may ask an applicant if s/he has any history of convictions. An employer may also ask about the circumstances that led to any conviction, including the arrest leading to the conviction and original charges, to determine how serious the applicant's conduct was. However, an employer may never ask about arrests that did not lead to convictions; convictions that were sealed, expunged, or reversed on appeal; convictions for violations, infractions, or other petty offenses such as "disorderly conduct;" resulted in a youthful offender or juvenile delinquency finding; or convictions that were withdrawn after completion of a court program.

If an employer is considering withdrawing a conditional offer after reviewing an applicant's conviction history, it must complete three steps:

- **Give the applicant a copy of any background check or other documents you used to determine that s/he had a criminal record;**
- **Evaluate the applicant under Article 23-A, and share that written evaluation with him/her; and**
- **Hold the job open for at least three business days so the applicant can respond.**

Under Article 23-A, an employer cannot deny work simply because of a criminal record. An employer may only decline to hire someone if there is a direct relationship between the applicant's criminal record and the prospective job or an employer can show that employing the person creates an unreasonable risk to your property or to the safety of specific individuals or the general public. The employer must consider the following eight factors in making your determination. If you determine that a direct relationship exists, evaluate the factors to determine whether the risk is decreased. If there is no direct relationship, all of the factors may be considered in determining whether an unreasonable risk exists.

The factors are:

- That New York public policy encourages the licensure and employment of people with criminal records.
- The specific duties and responsibilities of the prospective job.
- The bearing, if any, of the person's criminal record on her or his fitness or ability to perform one or more of the job's duties or responsibilities.
- The time that has elapsed since the occurrence of the events that led to the applicant's criminal conviction, not the arrest or conviction itself.
- The age of the applicant when the events that led to her or his conviction occurred.
- The seriousness of the applicant's conviction record judged by the applicant's conduct. Note that the Commission does not consider convictions for possession or sale of a controlled substance to be particularly serious.
- Any information produced by the applicant, or produced on the applicant's behalf, regarding her or his rehabilitation or good conduct. Because you are required to consider this information, you must affirmatively request it from applicants.
- The legitimate interest of the employer in protecting property and the safety and welfare of specific individuals or the general public.

- If an applicant has a certificate of relief from disabilities or a certificate of good conduct, you must presume s/he is rehabilitated.

For additional information, please visit the New York City Human Rights Commission website: <https://www1.nyc.gov/site/cchr/media/fair-chance-act-campaign.page>

Fair Chance Act (FCA) Amendments effective on July 29, 2021. These amendments implement, among other things, (1) significant changes to the process by which an employer hiring or employing workers in New York City may take into account the criminal history of an applicant for employment; (2) a new requirement of an individualized assessment process for consideration of pending criminal arrests and charges, and for criminal convictions of current employees, and (3) a strict prohibition on the consideration of various types of “non-convictions” in employment decisions. Key points:

- Non-criminal history background checks must be completed and cleared before criminal history is requested and considered.
- Employers must apply the FCA factors when considering an applicant’s or current employee’s pending criminal charges or a current employee’s convictions during employment.
- Non-convictions may not be considered in the hiring process or during employment.
- The time to respond to the FCA notice is increased from 3 to 5 business days.

Rochester

Employers may not ask about criminal history during application process, including through initial interview (whether in person or by telephone). If the employer does not conduct an interview, it must inform the applicant whether it intends to conduct background check before start of employment. Ordinance applies to city vendors (including those located outside city) and any entity that employs persons in positions for which the primary place of work is within city.

Suffolk County

Effective August 25, 2020, the County or any other employer with fifteen (15) or more employees, absent specific exception (such as where law requires background check), may not make any inquiry into arrest or criminal conviction of any applicant until after initial interview. Employer also may not limit employment based on arrest record or criminal conviction in any advertisement or solicitation.

Syracuse

Employers who contract with the City may not request criminal history information on application or at any time during the application process, until the individual has received conditional offer.

Westchester County

Except for law enforcement jobs or positions where background check is required, employers may not include question about arrests or convictions on application but may inquire into arrests and convictions after application is submitted.

North Carolina

The subject of an expunged record may legally refrain from responding to any inquiry regarding expunged entries related to arrest or trial.

Ohio

Employers may not inquire about applicant's juvenile arrest record that has been expunged and applicant may respond as if the record does not exist. In any application for employment, a person may be questioned only with respect to convictions not sealed, unless the question bears a direct and substantial relationship to the position for which the person is being considered.

Oklahoma

Employers may not require an applicant to disclose any information contained in sealed arrest/conviction records. The applicant may state that no such action has ever occurred.

Oregon

An employer may not require an applicant to disclose a criminal conviction on a job application or prior to an initial interview. If the employer doesn't conduct an interview, it may not require an applicant to disclose a criminal conviction prior to making a conditional job offer.

Employers are exempt if:

- Federal, state or local law, including corresponding rules and regulations, requires the consideration of an applicant's criminal history.
- The employer is a law enforcement agency or part of the criminal justice system.
- An employer is seeking a nonemployee volunteer

Portland

Effective January 1, 2016, Ordinance 187459 states that non-exempt employers may not inquire into or access an applicant's criminal background until the conditional offer of employment. Any workplace with six or more employees is covered so long as they have workers who perform majority of their time within the City of Portland (including full-time, part-time, temporary, or seasonal workers).

If applicant discloses criminal history before conditional offer of employment (despite employer's compliance with the requirements of the ordinance), employer must disregard

information and take reasonable steps to prevent further disclosure or dissemination of applicant's criminal history. Moreover, employer may not base its decision to make (or not make) conditional offer on self-disclosed information.

Employers are exempt if:

- Federal, state, or local law requires employer to consider applicant's criminal history;
- Employer is law enforcement agency or part of criminal justice system
- Employer is seeking nonemployee volunteer.

Under the Portland ordinance, an employer may also consider an applicant's criminal history prior to a conditional offer of employment for positions that:

- Involve direct access to children, seniors, persons with disabilities, mental illness, or alcohol or substance dependence.
- Present increased public safety concerns (as determined by administrative rule or business necessity);
- Are designed to encourage employment of those with criminal histories (as designated by the employer as part of a federal, state or local government program);

Or involve one or more of the following:

- Master key holders, including maintenance personnel
- Tow truck operators (may access DMV driving record as well)
- Drivers of goods, equipment, personal property and persons (may access DMV driving record as well)
- Access to confidential and/or sensitive info (personnel, medical, discipline records, etc.)
- Mandatory insurance bonding.

The ordinance requires that employers assess the nature and gravity of the criminal offense, the time that has elapsed since the criminal offense took place, and the nature of the employment held or sought. Employers may not consider the following: arrests not leading to a conviction (except where a crime is unresolved or charges are pending), convictions voided or expunged, or charges not involving physical harm or attempted physical harm that have been resolved through the completion of a diversion or deferral of judgment program.

If an employer chooses to rescind a conditional offer after consideration of a criminal record, employer must notify the applicant in writing and identify the relevant criminal convictions on which the decision is based.

Pennsylvania

Employers may not consider arrest records. Felony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied.

Philadelphia

Effective March 14, 2016, Bill 150815 prohibits City agencies and private employers, with at least one employee, from "any inquiry" regarding an applicant's criminal convictions any time from the moment the applicant seeks employment until after a conditional offer of employment is made.

The inclusion of such inquiry on an employment application shall be unlawful, whether or not certain applicants are told they need not answer the question. The inquiry shall also prohibit including any question regarding the applicant's willingness to submit to a background check.

- If an applicant voluntarily discloses information regarding his or her criminal convictions during the application process, the employer may discuss the criminal conviction disclosed by the applicant at that time.
- An employer may give notice, to prospective applicants or during the application process, of its intent to conduct a criminal background check after any conditional offer is made, provided that such notice shall be concise, accurate, made in good faith, and shall state that any consideration of the background check will be tailored to the requirements of the job.

Once a conditional offer is made, the employer can perform a criminal background check. However, the employer can consider only convictions within the preceding 7 years, exclusive of any period of incarceration

After obtaining the results of the background check, similar to the EEOC criminal history guidance, the employer must determine whether the conviction is for an offense that "bears such relationship to the employment sought that the employer may reasonably conclude that the applicant would present an unacceptable risk to the operation of the business or to co-workers or customers, and that exclusion of the applicant is compelled by business necessity." To make this determination, the employer must conduct an "individualized assessment" based upon the following:

1. The nature of the offense;
2. The time that has passed since the offense;
3. The applicant's employment history, both before and after the offense and any period of incarceration;

4. The particular duties of the job being sought;
5. Any character or employment references provided by the applicant; and
6. Any evidence of the applicant's rehabilitation since the conviction.

After a criminal background check is performed, following the conditional offer of employment, the offer cannot be revoked unless:

- The employer performs the individualized assessment and concludes that hiring the applicant would pose “an unacceptable risk in the position applied for”; or
- The applicant fails to meet another legal or physical job requirement.

If a conditional offer is revoked, the employer must provide written notice of its decision and the basis for the decision, along with a copy of the criminal history report. The employer must give the applicant 10 business days to provide any evidence of inaccuracy or to give an explanation.

For additional information, please visit Philadelphia Commission on Human Relations website:

<http://www.phila.gov/HumanRelations/DiscriminationAndEnforcement/Pages/BanTheBox.aspx>

Rhode Island

Employers may not inquire about an applicant's arrest records not resulting in conviction. Job applicants with expunged convictions may state that they have not been convicted.

Prospective employers with four or more employees also may not make inquiries on employment applications regarding criminal convictions except when federal or state law mandates disqualification of a person from employment because of a prior criminal conviction or specifically authorizes such inquiries.

Employers may include such a question or otherwise inquire about an applicant's conviction history where a federal or state law or regulation creates a mandatory or presumptive disqualification from employment based on a conviction for one or more certain crimes.

South Carolina

There is no Statewide ban the box law.

Columbia

Private employers doing business with the City shall not conduct background checks on applicants unless it has made good faith determination that relevant position is of such sensitivity that background check is warranted (or if background check is required by law).

If background check is found to be warranted, all job announcements and position descriptions shall contain the following information, unless otherwise required by law: “This position is subject to a background check for any convictions directly related to its duties and responsibilities. Only job-related convictions will be considered and will not automatically disqualify the candidate.”

Job applications shall not inquire into an applicant’s conviction history. Prior to any conviction history check, employer shall send applicant conditional offer letter, notice of rights under ordinance, and request for authorization to conduct background check, if so required.

Texas

There is no Statewide ban the box law.

Austin

Effective April 4, 2016, private employer that employs at least fifteen (15) individuals whose primary work location is in the City for each working day in 20 or more calendar weeks in the current or preceding calendar year or “an agency acting on behalf of an employer”; are prohibited from inquiring about an applicant’s criminal background until after a conditional offer of employment

Fair Chance Hiring Ordinance requires that employers do an individual assessment using the three traditional factors: nature and gravity of the offense, how long ago it happened, and how the crime applies to the job. If an employer rejects a person for a job or promotion, the employer must state in writing to the person that the *criminal history* has disqualified them from the job. The Ordinance does not require any specific information being communicated to the consumer, such as identifying the exact criminal conviction or how it relates to the job.

For additional information, please visit the City of Austin Government website:
<http://www.austintexas.gov/edims/document.cfm?id=251818>

DeSoto City

Effective January 1, 2022, private employer that employs at least fifteen (15) individuals whose primary work location is in the City of DeSoto may not inquire into an applicant’s criminal history on an initial job application.

The ordinance defines employment to mean “work for an employer for pay” including full-time, part-time, temporary, seasonal, contract, casual or contingent work, work through the services of a temporary or other employment agency and participation in a vocational, apprenticeship or

educational training program. The Ordinance also does not apply to any position for which an individual criminal history must be known to comply with restrictions under federal, state, or local law or to comply with a legally mandated insurance or bond requirement.

Utah

Employers cannot obtain information about an expunged portion of a criminal record. Further, a potential employee who has received an expungement of an arrest or conviction may respond to an employer's inquiry as though the arrest or conviction did not occur.

Vermont

Employers shall not request criminal history record information on its initial employee application form. An employer may inquire about a prospective employee's criminal history record during an interview or once the prospective employee has been deemed otherwise qualified for the position.

Exemptions exist if the applicant is:

- applying for a position that any federal or State law or
- regulation creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses, or
- if the employer or an affiliate of the employer is subject to a legal obligation (either federal or State) not to employ an individual who has been convicted of one or more types of criminal offenses.

In either situation, the questions on the application form must be limited to the types of criminal offenses creating the disqualification or obligation.

Virginia

An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged. The law also allows applicants when answering questions about arrests, criminal charges or convictions to exclude references or information about simple possession of marijuana.

Employers and educational institutions are prohibited from requiring applicants to disclose information concerning and arrest, criminal charge or conviction for simple possession of marijuana, with the exception of distribution of or intent to distribute marijuana. Willful violations of such will be subject to criminal penalties and violators can be found guilty of a Class 1 misdemeanor for each violation.

Washington

Under Washington Fair Chance Act, employer may not include question on application, inquire orally or in writing, receive information through background check, or otherwise obtain information about criminal record until after employer initially determines applicant is otherwise qualified. Employer also may not advertise openings in way that excludes applications from people with criminal records or implement policy or practice that excludes individuals with criminal record from consideration.

Exceptions to the Washington Fair Chance Act include:

- Employers hiring for positions with unsupervised access to children under age of eighteen, vulnerable adults, or other vulnerable persons per state law.
- Employers expressly permitted or required under applicable law to inquire into, consider, or rely on criminal record information.
- Law enforcement or criminal justice agencies.
- Employers seeking nonemployee volunteers.
- Entities required to comply with rules or regulations of self-regulatory organization

Seattle

Effective November 1, 2013, the Fair Chance Employment Ordinance prohibits employers from inquiring into an applicant's criminal history until after the employer has identified qualified applicants. The Ordinance applies to employers with one or more employees working inside Seattle city limits. The ordinance applies to employee positions within Seattle, regardless of the location of the employer, corporation, or headquarters. The employer must adhere to the ordinance for employee positions that perform a substantial part (at least 50% of the time) of their employment services in Seattle. The law also applies to job placement, referral and employment agencies that place individuals in jobs within Seattle city limits.

Does not include law enforcement, policing, crime prevention, security, criminal justice, or private investigation services. Also does not include an individual who will or may have unsupervised access to children under 16, developmentally disabled persons, or vulnerable adults.

Employers are permitted to conduct criminal history investigations and may exclude individuals from employment based on the applicant's criminal history if there is a legitimate business reason for doing so. The ordinance defines "legitimate business reason" and requires employers to consider a list of factors, including those enumerated by the EEOC. Before an employer takes a negative employment, decision based on an applicant's criminal history, the employer must identify to the applicant what information they are using to make a decision and provide the applicant, with a minimum of two days in which to correct or explain that information.

For additional information, please visit Seattle's Office of Labor Standards website:
<http://www.seattle.gov/laborstandards/ordinances/fair-chance-employment>

Spokane

Effective June 14, 2018, covers all employers within the City, including temporary staffing agencies.

No employer shall:

- Advertise applicable employment openings in a way that excludes people with arrest or conviction records from applying, such as using advertisements which state “no felons,” “no criminal background,” or which otherwise convey similar messages; provided, employers may advertise the requirement for a criminal history inquiry and/or background check during or after the interview process as long as such advertisement does not state that an arrest or conviction record will automatically preclude the applicant from consideration for employment;
- Include any question in an application for applicable employment, inquire orally or in writing, receive information through a criminal history background check, or otherwise obtain information about an applicant’s arrest or conviction record prior to an in-person, telephonic, or video interview or received a conditional offer of employment;
- Use, distribute, or disseminate an applicant’s or employee’s arrest or conviction record except as required or otherwise allowed by law;
- Disqualify an applicant from applicable employment prior to an in-person, telephonic, or video interview solely because of a prior arrest or conviction unless the conviction is related to significant duties of the job or disqualification is otherwise allowed by this chapter; or
- Reject or disqualify an applicant for failure to disclose a criminal record prior to initially determining the applicant is otherwise qualified for the position

An employer may inquire about or use a candidate’s criminal conviction or arrest records in a hiring decision, but it must first conduct an in-person, telephonic, or video interview or extend a conditional offer of employment.

This Ordinance does not apply to:

- Employer hiring an employee who will have unsupervised access to children under the age of eighteen, a vulnerable adult as defined in RCW 74.34.020(21), or a vulnerable person as defined in RCW 9.96A.060.
- Employers who are expressly permitted or required under any federal or Washington state law to inquire into, consider, or rely on information about an applicant’s arrest or conviction record for employment purpose.
- Any General Authority Washington law enforcement agency as defined in RCW 10.93.020(1).

- Where criminal background checks are specifically permitted or required under state or federal law.

Washington, D.C.

Employers (public and private) with more than 10 employees may not inquire into a job applicant's criminal conviction record until a conditional job offer is made. All inquiries regarding a job applicant's arrest record(s) are prohibited.

Facilities or employers whose primary purpose is to provide services to minors or vulnerable adults are exempt from the ban the box prohibition. The prohibition also does not apply where federal or local laws or regulations require consideration of an applicant's criminal history for purposes of employment or where the job position has been designated by the employer as part of a federal or local program designed to increase employment opportunities for those with criminal histories.

West Virginia

Employer may not ask about expunged criminal records. Upon expungement, the proceedings in the matter are deemed never to have occurred, and the individual who was the subject of the record does not have to disclose anything relating to the record or matter on an application for employment.

Wisconsin

Employers may not request that an applicant supply information about pending criminal charge or conviction record on an application form or otherwise unless the charge or conviction is relevant to the employee's bond ability when employment depends on bond ability, or if the circumstances of the charge are substantially related to the circumstances of the job.

Madison

The ordinance applies to city contracts worth over \$25,000 awarded or renewed January 1, 2016 or later. It prohibits criminal history inquiries or background checks until after a conditional offer of employment. It also requires contractors to post a city-provided notice informing job applicants about the ordinance's requirements.

Wyoming

If a record is expunged, it is deemed never to have existed, and an applicant for employment may reply accordingly to any inquiries regarding such records.