

The State of Employment Law:

How to Comply with Trending Hiring Laws

April 2019



What We'll Cover

- When you can – and can't – ask about a candidate's criminal background
- Why requesting salary history is illegal in certain cities and states
- Mandatory language that must appear on job applications
- Best hiring practices to avoid legal missteps
- Practical online tools to support successful, legal hiring at every stage

Trend #1

Ban-the-Box Legislation

What Is Ban-the-Box?

Ban-the-box restricts employers from asking about criminal history in the early stages of hiring.

- To date, more than 30 states and 150 cities/counties have passed laws to reduce hiring barriers for individuals with criminal histories
- It's called "ban-the-box" because it prohibits the question on job applications, "Have you ever been convicted of a crime?"
- The laws restrict employers from asking this question until later in the hiring process

How It Affects Your Hiring

- You're not prohibited from conducting a legally sound background check
- You're not required to hire individuals with criminal records
- Ban-the-box laws may restrict inquiries into certain types of convictions
- Certain industries and jobs may be allowed to ask about criminal history on the application

How It Affects Your Hiring

How can you be confident you're in compliance?

- Check your state and local laws
- Make sure you're using an attorney-approved, state-specific job application
- Modify your hiring procedures to delay any inquiry about criminal history until legally allowed

Does It Apply to Your Business?

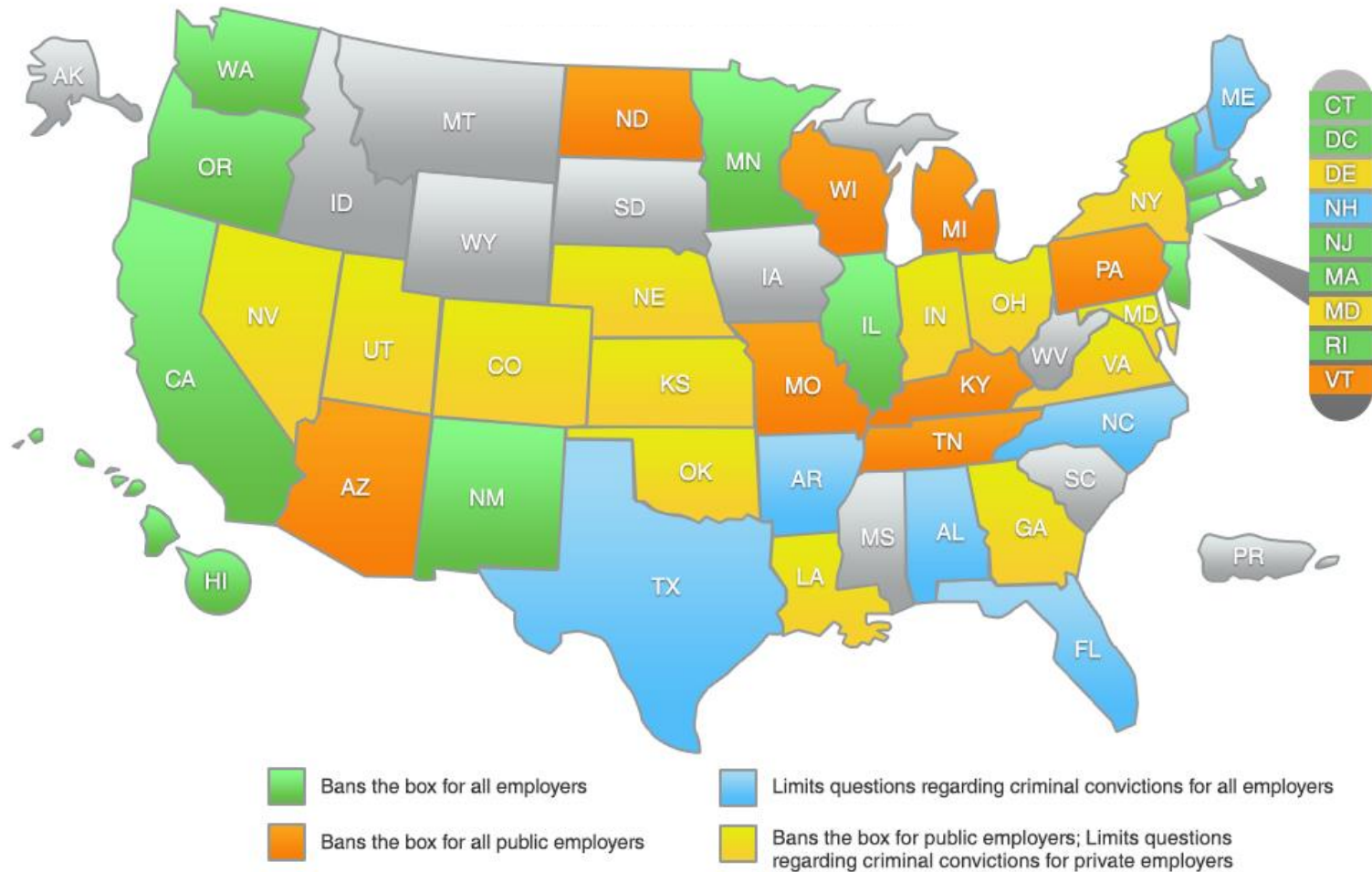
- 34 states have prohibited **public employers** from inquiring about criminal history on employment applications
- Of those 34 states, 12 states also have prohibited **private employers** from asking about criminal history on applications
 - California, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington

Does It Apply to Your Business?

In addition, these 18 cities/counties prohibit public *and* private employers from asking about criminal history on job applications:

- Austin (TX), Baltimore (MD), Buffalo (NY), Chicago (IL), Columbia (MO), the District of Columbia, Kansas City (MO), Los Angeles (CA), Montgomery County (MD), New York City, Philadelphia (PA), Portland (OR), Prince George's County (MD), Rochester (NY), San Francisco (CA), Seattle (WA), Spokane (WA), and Westchester County (NY)

Does My State Ban the Box?



Trend #2

Salary History Laws

Salary History Laws

Salary history questions on the job application can also pose a problem.

- A handful of states and cities now prohibit employers from asking applicants about their salary history
- The purpose is to discourage unequal pay between men and women – or people of different races
- In affected states and cities, employers can't ask, "What was your starting/ending rate of pay?"

Does It Apply to Your Business?

- On January 1, 2019, Connecticut and Hawaii laws took effect that prohibit salary history questions
- California, Delaware, Massachusetts, Oregon and Vermont also have salary history bans in effect
- Maine is the most recent state to enact a salary history ban (effective September 2019)
- Cities that currently prohibit salary history questions include but not limited to New York City and San Francisco

How It Affects Your Hiring

If this law applies to your business:

- Remove all questions related to salary history from your job applications
- Strike the question completely – if you keep the question on the application and indicate that a response is voluntary, you're still in violation
- Similarly, adding a disclaimer that “applicants from places where the ban is in effect need not answer the question” doesn't excuse you from liability

How It Affects Your Hiring

- Revise your approach to screening and interviewing to avoid questions about salary history
- Steer clear of salary history questions in any conversation with job applicants
- Headhunters and employment agencies that don't comply may be liable under the law
- Train hiring managers to ask the right questions

Trend #3

Mandatory Language on Job Apps

Federal Requirements

Job applications should:

- Omit age-related questions (such as high school graduation date)
- Include legally worded inquiry about work eligibility – instead of citizenship – for compliance with the Immigration Reform and Control Act
- Include EEOC-approved question regarding applicant's ability to perform essential functions of the job, with or without reasonable accommodation
- Include a general non-harassment clause

Additional Best Practices

- Include a question about previous non-compete agreements
- Have a legal inquiry about whether applicants are reapplying after extended military leave (alerting employers that USERRA may apply)
- Have a disclaimer that the application is limited to a specific opening at a specific time

Additional Best Practices

- Include a false statement warning (“I understand that any information provided by me that is found to be false or incomplete will be sufficient cause for immediate discharge”) to notify candidates that submitting false information will not be tolerated
- Include other important disclosures that protect employers from liability, such as at-will employment statement and a release for reference checking

State Laws

- Many states prohibit discrimination for characteristics beyond what is protected under federal law (e.g., sexual orientation)
- State specific characteristics should be included in the EEO statements
- States have other requirements, such as disclosures regarding expunged juvenile records
- Some states also prohibit employers from asking for certain information on the application (e.g. driver's license or Social Security numbers)

Let's Look at Examples

Massachusetts employers must:

- Omit criminal and salary history question: Private and public employers may not ask about criminal records or salary history
- Include mandatory lie detector test disclosure
- Include mandatory employment history statement: Applications must state that applicants can list volunteer work under employment history
- Include characteristics protected under Massachusetts anti-discrimination laws in EEO statement

Let's Look at Examples

Sample Legal Disclosure:

Notice to Maryland applicants: UNDER MARYLAND LAW, AN EMPLOYER MAY NOT REQUIRE OR DEMAND, AS A CONDITION OF EMPLOYMENT, PROSPECTIVE EMPLOYMENT, OR CONTINUED EMPLOYMENT, THAT AN INDIVIDUAL SUBMIT TO OR TAKE A LIE DETECTOR OR SIMILAR TEST. AN EMPLOYER WHO VIOLATES THIS LAW IS GUILTY OF A MISDEMEANOR AND SUBJECT TO A FINE NOT EXCEEDING \$100.

Let's Look at Examples

Indiana employers must:

- Include a state-specific criminal question regarding expunged criminal records
- Include a mandatory no-smoking disclosure
- Employers should also include EEO statements listing characteristics protected under Indiana anti-discrimination laws

How It Affects Your Hiring

- Avoid using a generic job application
- Review your current employment application to ensure it complies with all federal, state and local regulations
- If you operate in multiple locations, you may need different employment applications for each business location

5 Tips to Avoid Discrimination Claims When Hiring and Protect Your Business

Tip #1: Write a Thorough Job Description

A detailed job description is an important document in any defense against possible discrimination complaints. It serves to objectively outline the responsibilities and specific requirements for the position, and can guide you in conducting fair assessments of job applicants.

Tip #2: Ask Consistent Interview Questions Based on the Job Description

Ask each candidate the same questions and make sure these questions relate directly to the responsibilities, duties and requirements of the position. Straying from the job description and subjecting just one candidate to a line of questioning that is different from the others can invite unwanted legal issues.

Tip #3: Minimize Small Talk During Interviews

Polite conversation during interviews on topics unrelated to the job can lead to unintentional discrimination. Once you go off course, it's easy for the conversation or questions to slip into inappropriate areas such as family life, ethnicity or religion. Your company's interests are best served by keeping small talk to a minimum.

Tip #4: Train Everyone Who Interviews/Hires Job Applicants

Effectively training your employees in understanding, recognizing and preventing discrimination can reduce your legal risk during the hiring process. This training should be required for anyone who interviews or hires candidates.

Tip #5: Use Legally Sound Job Applications

A job application created with federal and state laws in mind allows you to pose specific questions without violating an applicant's privacy and employment rights.

HR Solutions

- Create your own online state-specific employment application
- Start with the most up-to-date job application for your state and customize for your business
- Generate a link to your job application with one click – or email the link directly to candidates
- Also allows you to print unlimited paper copies



Job Application

Smart Hiring Begins Before the Interview

HR Solutions



Applicant Tracking

Don't Let Five-Star Candidates Slip Away

- Allows you and your managers to collaborate through all stages of hiring
- Creates a step-by-step process for capturing and coordinating candidate information and activity
- Track applicants through initial review, first interview, offer, drug testing, reference check, etc.
- Assign different stages to different managers and skip over the ones not needed