

Hire with Confidence: How to Comply with “Ban the Box” and Other Trending Hiring Laws

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Welcome! Before we get started ...

- Use the chat box on the left to ask questions
- If you are having audio trouble, please message us in the chat box, and we will do our best to assist you



What We Will Cover

- History and overview of ban the box legislation
- Pay equity laws and job applications
- EEOC guidance beyond state and local anti-discrimination laws
- Additional mandatory language with state job applications
- Best practices for fair hiring and reduced risk with questionable candidates

Ban the Box Law



What Is Ban the Box?

- Refers to criminal history question on job applications:
 - Have you ever been convicted of a crime? YES NO
- Question now banned in 24 states and more than 150 cities and counties
- Several large retailers also have adopted these practices

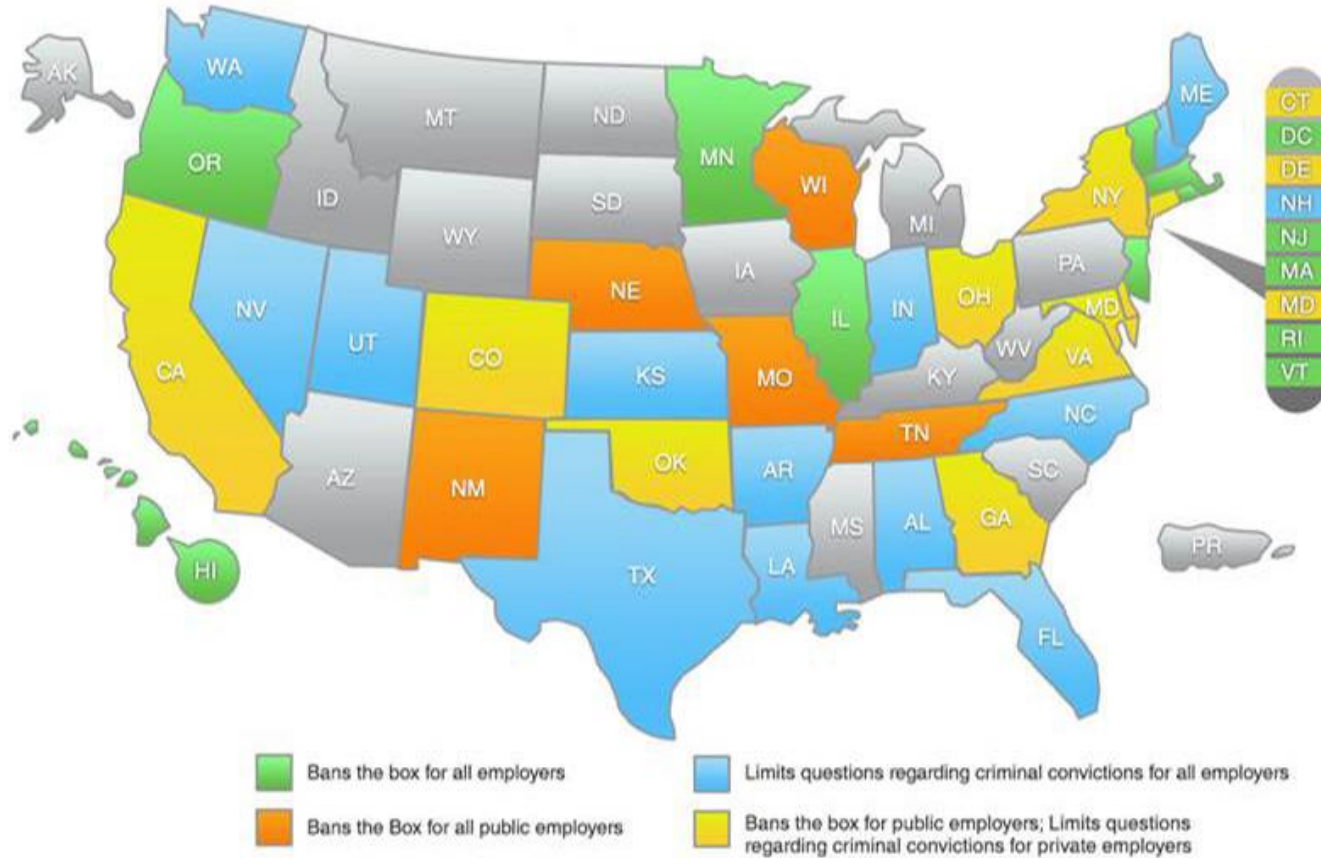
History of Ban the Box

- Hawaii first state; Philadelphia first city
- Activist group coined “ban the box” phrase in early 2000s
- Now a common reference to any criminal history restrictions

Why Ban the Box Exists

- Helps reduce barriers for individuals with a criminal arrest or conviction seeking employment
 - 1 in 3 American adults has a criminal arrest or conviction
- Originally only applied to public employers, now spreading to private employers
- Growing quickly to include more states

What States “Ban the Box”?



What Ban the Box Means for Employers

- Not *required* to hire those with a criminal record
- Still can conduct legal background checks
- Delay criminal history inquiry until later in the hiring process:
 - Interview (check state law)
 - Job offer

Security-Sensitive Positions

- Background checks still required for:
 - Law enforcement agencies
 - Financial institutions
 - School districts
 - Child care
 - Jobs involving the disabled, elderly or vulnerable

How to Review a Criminal Background Check

- Case-by-case basis
- Consider:
 1. Time since the conviction
 2. Nature of the offense
 3. Nature of the job
 4. Any criminal history restrictions
- Must have a clear connection why criminal record makes the applicant unfit for the job



Let the Applicant Respond

- Allow applicant an opportunity to explain facts and circumstances
- Background checks may contain inaccuracies or errors
- Before rejecting any candidates, give them notice and a copy of their report
- Follow the Fair Credit Reporting Act, and any state and/or local requirements

Pay Equity Law



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What Is the Pay Equity Law?

- Refers to the salary history question on job applications
 - “What is your starting/ending rate of pay?”
- MA first state to set law prohibiting salary question, effective January 1, 2018
- NY - law for public employers is the most recent enactment
- Philadelphia is the first city to prohibit salary question

History of Pay Equity Law

- Pay equity law falls under FLSA
 - Equal Pay Act of 1963 - equal pay for equal work
 - Created to abolish wage disparity based on gender
- Required for employers to comply
 - Doesn't require salary transparency
 - Gives employers too much leeway
- Eliminating salary history question forces employers to comply

Why Pay Equity Exists?

- Levels the “salary” playing field between men and women in the workforce
- More states expected to follow suit as push for equal pay takes off
- Texas and New Jersey have introduced proposed legislation
- Over 15 other states and/or cities currently have similar bills pending
- May not prohibit salary question, but forces employers to provide “equal pay for equal work”

EEOC Guidance



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EEOC Guidance

- Issued a 2012 notice that criminal records can create the potential for hiring discrimination
 - “Disparate impact”: Blacks and Latinos are arrested at a rate 2 to 3 times their proportion to the general population
- Use caution, regardless of existing state or city ban the box laws
- Never refuse a candidate *just because of* a criminal conviction unless job-related or safety concern



EEOC Guidance

- Issued a November 2016 notice on enforcement guidance on national origin discrimination
 - Employers **MUST** not treat candidates differently during hiring process
 - Employers cannot rely on discriminatory preferences of coworkers, customers or clients



Mandatory Language and Hiring



Mandatory Language and Job Applications

- Use a job application that abides by your state-specific laws
 - **Especially regarding criminal history questions**
 - **Salary history question**
 - **Volunteer work information**
- Include other legal disclosures and questions to safeguard your business

State-Specific Legal Disclosures

- Special language may be necessary:
 - Smoking
 - Lie detector test
 - Volunteer work
 - Driver's license
 - Social Security number
- Multiple disclosure requirements for some states



Example of Legal Disclosure

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.



Best Practices When Hiring



Best Practices When Hiring (Cont'd)

DO's:

- Include state-specific protected classes
- Include confidentiality clause
- Include ADA reasonable accommodation clause
- Use state-specific attorney approved job applications
- Treat all applicants the same

DON'TS:

- Ask for candidates SSN on the job application
- Ask questions that reveal the applicant's age
- Ask questions that reveal the applicant's membership in a protected class

Quick Overview

- Ban the box legislation is growing for both public and private employers
- Pay equity laws are on the rise and seem to be the new trend
- Check with the EEOC for any guidance regarding hiring laws
- Use state-specific job applications
- Protect yourself by following best practices for fair hiring



State-Specific Compliant Job Applications from ComplyRight

Application for Employment

Equal access to programs, services and employment is available to all persons. Those applicants requiring reasonable accommodations to the application and/or interview process should notify a representative of the Human Resources Department.

Name: _____ Applicant ID #: _____
 Address: _____
 Telephone # (____) _____ Cellular/Other Phone # (____) _____ E-mail Address: _____
 Position(s) applied for: _____ Date of application: ____/____/____

Referral Source (Please check the appropriate category and list the source.)

<input type="checkbox"/> Walk-in	<input type="checkbox"/> Referral
<input type="checkbox"/> Employee	<input type="checkbox"/> Job Fair
<input type="checkbox"/> Advertisement	<input type="checkbox"/> Staffing Agency
<input type="checkbox"/> Company's Website	<input type="checkbox"/> Government Employment Agency
<input type="checkbox"/> Other Internet	<input type="checkbox"/> Other

If necessary, best time to call you is: _____
 Home Cellular/Other

May we contact you at work? _____
 If yes, with number and best time to call: _____
 (____) _____

If you are under 18 and it is required, _____
 can you furnish a work permit? _____
 If yes, please explain: _____

Have you submitted an application here before? _____
 If yes, give date(s) and position(s): _____

Have you ever been employed here before? _____
 If yes, give dates from ____/____/____ to ____/____/____
 following an extended military leave of absence _____
 from this company? _____
 If yes, additional information may be requested.

Are you legally eligible for employment _____
 in this country? _____

What is your desired salary range or hourly rate of pay? _____
 \$ _____ Per _____
 Type of employment desired: Full-Time Part-Time
 Educational Co-Op Seasonal Temporary

Will you indicate if job requires it? _____
 Yes No

Will you travel if job requires it? _____
 Yes No

If they have been explained to you, are you able to meet the attendance requirements of the position? _____
 Yes No

Will you work overtime if required? _____
 If yes, please explain: _____

Are you able to perform the "essential functions" of the job for which you are applying (with or without reasonable accommodation)?
 This question is not intended to elicit information about an applicant's disability. Please do not provide information about the existence of a disability, particular accommodations, or specific accommodations to interview. Please focus only on the information at issue stated in the actual position to be filled.

Yes No Need more information about the job's "essential functions" to respond

Driver's license number required if driving may be required to the job for which you are applying: _____ State: _____

Have you ever been bonded? _____
 Will, however, not be the following questions from not constitute an attempt to be employment history and in lieu of the above, references and dates of the candidate, and information will be taken into account. Do not answer these questions, do not include name, title, dates and addresses of former employers, dates of employment, dates of termination or reference discharged and the date you have previously furnished references and information to any other employer, and any other information that would be considered confidential.

Have you ever provided "quality" or "best customer" or _____
 or been awarded a misdemeanor or felony? _____
 If yes, please provide date(s) and details: _____

Have you ever been arrested for any matters for which you get out on bail or on your own recognizance pending trial? _____
 If yes, please provide date(s) and details: _____

Have you entered into an agreement with any former employer or other party (such as a noncompetition agreement) that might, in any way, restrict your ability to work for our company? _____
 If yes, please explain: _____

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- Attorney-written and -approved
- Includes appropriately worded criminal history question (where legally permitted)
- Includes ADA reasonable accommodation language
- Includes confidentiality statements
- Applies best practices for fair hiring



Questions



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