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New Wave of Ban the Box Laws

The trend toward limiting employer access to and use of applicant criminal history record information continues. Two new jurisdictions recently passed "ban the box" laws, so called due to their impact on blanket employment applications inquiring about applicant criminal history.

Effective Jan. 1, 2015, the Illinois [Job Opportunities for Qualified Applicants Act](#) prohibits an employer from inquiring about, considering or requiring disclosure of a criminal record or history of an applicant until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview or, if there is not an interview, until after a conditional offer of employment is made. The Illinois law applies to private employers with 15 or more employees in the current or preceding calendar year, the agent of any such employer, and employment agencies. A previously enacted law already restricted public employer access to criminal history information.

Effective March 1, 2015, New Jersey's [Opportunity to Compete Act](#) also restricts employer inquiries into applicant criminal histories. The Act prohibits covered employers from: (1) requiring an applicant for employment to complete any employment application that makes any inquiries regarding an applicant's criminal record during the initial employment application process; and (2) making oral or written inquiry regarding an applicant's criminal record during the initial employment application process. "Initial employment application process" is defined as "the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy, and ending when an employer has conducted a first interview, whether in person or by any other means of an applicant for employment." Employers are also prohibited from publishing job advertisements indicating that persons who have been arrested or convicted of a crime will not be considered for employment. The Act applies to public and private employers with 15 or more employees over 20 calendar weeks that do business, employ persons or take applications for employment within New Jersey, including employment agencies. There are specific exceptions in the law for positions where criminal history would legally prohibit employment. ■

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