



N.J. Human Resources Law Alert

A Publication of Saiber LLC's Employment Law Group
Sean R. Kelly, Esq. and DanaLynn Colao, Esq., Co-Editors
www.saiber.com

Article Authors: DanaLynn Colao and Paola Hemsley

AUGUST 2014

Do you need to change your Job Application?

“THE OPPORTUNITY TO COMPETE ACT” Prohibits Job Applications from Asking About Criminal History

If your job application asks individuals whether they have ever been convicted of a crime, it may need to be amended to comply with “The Opportunity to Compete Act”, also known as the “Ban-the Box” law, signed by Governor Christie earlier this month (the “Act”). This new law imposes restrictions on the ability to ask certain employment applicants about their criminal history.¹ The Act applies to New Jersey employers with fifteen or more employees and goes into effect on March 1, 2015.

The purpose of the Act is to prevent the instant disqualification of applicants who answer “yes” to the question of whether they have ever been convicted of a crime. To accomplish this goal, the Act expressly prohibits inquiries regarding an applicant’s criminal record until after the “initial employment application process,” which is defined as ending when the employer has conducted a first interview of the individual.² The Act also prohibits employers from using job advertisements that tell applicants that have been arrested or convicted of a crime not to apply, unless otherwise permitted or required by law, rule or regulation.

In addition, Section 7 of the Act expressly prohibits local governing bodies from adopting any laws regarding criminal histories in the employment context (unless such laws are to regulate municipal operations), and supersedes any existing laws, that are or have been adopted prior to the effective date of the Act.

¹ Although not required by the Act, employers should be aware of the recommended factors for consideration of an applicant’s criminal history that are contained in the Equal Employment Opportunity Commission’s (“EEOC”) Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964. See http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

² The Act does not prohibit criminal history inquiries if otherwise applicable laws, rules or regulations (1) require criminal history background checks, (2) would or may preclude employment of an applicant with a criminal history, or (3) would restrict an employer’s ability to engage in a specified business based on the criminal records of its employees.

Employers who violate the Act may be subject to civil penalties by the State of New Jersey, ranging from \$1,000 for the first violation; \$5,000 for the second violation and \$10,000 for the third and subsequent violations.

For any questions relating to “The Opportunity to Compete Act” or how you should amend your hiring practices, please contact DanaLynn Colao, Esq. or Paola Hemsley, Esq.

Disclaimer

The information contained in this notice should not be relied upon as legal advice and recipients of it should consult with an attorney to determine the specifics of the provisions referenced herein and their applicability to them.