

Client Alert

Ban the Box Legislation Continues to Spread Across the Country

August 20, 2014 – A new legislative movement that restricts employers from inquiring into a job applicant’s criminal history continues to gain momentum throughout the country. New Jersey became the latest state to pass “ban the box” legislation when Governor Chris Christie signed the New Jersey Opportunity to Compete Act (the “Act”) last week. New Jersey is now the thirteenth state to pass a “ban the box” law that precludes employers from asking about a job applicant’s criminal history during the initial stages of the hiring process. The Act, which takes effect March 1, 2015, only prevents an employer from inquiring about a job applicant’s criminal record during the initial stages of the application process. In other words, it is unlawful for an employer to ask potential applicants about prior criminal convictions on an application form submitted *prior* to a first round interview. The Act does not prohibit an employer from inquiring about an applicant’s criminal record *after* the first round interview has concluded.

Even though the Act does not generally prohibit employers from declining to hire an applicant based on a prior criminal conviction, all employers (regardless of their location) must evaluate their hiring policies to ensure that they do not create a disparate impact on individuals of a particular race, national origin, or other protected characteristic. Indeed the U.S. Equal Employment Opportunity Commission (“EEOC”) published guidance on an employer’s use of criminal background checks in making employment decisions. Our March 2014 Client Alert (available [here](#)), summarizes the EEOC’s publication and explains certain factors that the EEOC will consider to determine whether the use of criminal background checks are conducted in a non-discriminatory manner.

If you require any additional information about your hiring or recruiting policies, or any other employment-related issue, please contact:

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