

Rhode Island “Ban the Box” Took Effect January 1, 2014

On July 16, 2013, Rhode Island became the 10th state in the nation to pass “Ban the Box” legislation, joining California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Minnesota, and New Mexico.

Governor Lincoln Chafee signed into law an amendment to the Rhode Island Fair Employment Practices Act. The amendment, at R.I.G.L. § 28-5-7(7), makes it an unlawful employment practice “[f]or any employer to include on any application for employment . . . a question inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been arrested, charged with or convicted of any crime,” subject to limited exceptions.

Employers’ Compliance Obligations

Prior to the first interview, employers are prohibited from asking in a job application whether a job applicant has ever been arrested, charged with or convicted of any crime. Employers also may not pose the question verbally to job applicants prior to a job interview.

The following exceptions apply:

- The legislation does not apply to applications for law enforcement agency positions or positions related to law enforcement agencies.
- An employer may inquire, on an employment application or otherwise, whether an applicant has ever been convicted of a specific offense(s) IF a federal or state law or regulation creates a mandatory or presumptive disqualification from employment based on an applicant’s conviction of one or more specified crimes.
- For example, if a law or regulation prohibits an employer from hiring a person convicted of assault as a child care worker, the employer may inquire as to whether the applicant has ever been convicted of assault (but may not generally inquire as to whether the applicant has ever been convicted of “a crime”).
- An employer may inquire, on an employment application or otherwise, as to whether an applicant has ever been convicted of a specific offense(s) IF a standard fidelity bond or an equivalent bond is required for the position in question AND an applicant’s conviction of one or more specified offenses would disqualify him/her from obtaining the bond.

In both circumstances, the pre-interview question must be narrowly tailored to the potentially disqualifying offenses. Employers may ask about an applicant’s conviction of any criminal offense(s) at or after an initial interview, in accordance with applicable state and federal laws.

The new law applies to questions about convictions only. Under current law, employers are already prohibited from inquiring as to whether an applicant has ever been arrested for or charged with a crime, except in cases of applications for law enforcement agency positions or positions related to law enforcement agencies.



In "banning the box" for private employers, Rhode Island and Minnesota join Massachusetts, and Hawaii, as well as the cities of Seattle, Washington; Buffalo, New York; Philadelphia, Pennsylvania; and Newark, New Jersey.

Key Next Steps for Employers

- Rhode Island employers must ensure that by January 1, 2014, they no longer ask about criminal history on their job applications or in person prior to a first interview.
- Employers should review their employment applications to ensure they are fully compliant.
- Employers should take steps to ensure that their hiring practices comply with the changing state and local regulations. Employers should update their applications as appropriate and train hiring managers on how to properly obtain criminal background information in the hiring process.

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