



HR e-Alert: San Francisco Amends Ban the Box Law

Background

“Ban the Box” is a catch phrase for initiatives that seek to advance employment opportunities for people with prior criminal convictions by eliminating any inquiry into a candidate’s criminal history on the job application. This was specifically driven from the check box that requires candidates to disclose their criminal history on an employment application. Banning these types of inquires has been a trend, as more than 150 cities and counties as well as 31 states have passed ban-the-box laws.

San Francisco has been the latest headline regarding ban the box. The city has amended its Fair Chance Ordinance to align with the California statewide ban-the-box law, which took effect January 1, 2018. The California law protects job applicants more favorably than does San Francisco, which is why lawmakers made these amendments. Subject to very few exceptions, all California employers are prohibited from considering certain types of criminal history information, including arrests that did not lead to a conviction, juvenile records, nonfelony marijuana convictions that are older than two years, and diversions or deferrals. The amendments to the San Francisco law go beyond this, by barring covered employers from considering convictions that are more than seven years old as well as infractions.

What employers need to know

The amended ban-the-box law in San Francisco, effective October 1, 2018, will prohibit employers with five or more employees from inquiring about, discussing, or requiring disclosure of an applicant’s conviction history until after a conditional offer of employment.

However, until that date, San Francisco continues to prohibit employers with 20 or more employees from inquiring about, discussing, or requiring disclosure of an applicant’s conviction history until after the first live interview—whether conducted in person or by phone or videoconference—or a conditional offer of employment is made.

Employer next steps

Multi-state employers and those that specifically operate in San Francisco should determine whether they need to revise their employment applications, interview guidelines, and policies and procedures for criminal background checks to ensure compliance with the amended ordinance.

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