

LABOR & EMPLOYMENT LAW ALERT

MARCH 1, 2013

Proposed Legislation to “Ban the Box” in New Jersey

By: *Emily J. Bordens*

A bill has recently been introduced called “New Jersey’s Opportunity to Compete Act” which, if enacted, would prevent employers from requiring applicants to disclose a criminal history on job applications. Proponents of the bill argue that criminal background screening has a disproportionate discriminatory impact on minority individuals.

New Jersey Senator Sandra Bolden Cunningham, D-Hudson, one of the co-sponsors of the bill, explained in a recent press release that “[a]cross the state, law-abiding ex-offenders are finding that their past mistakes serve as a barrier to employment in this already tough economy.” Senator Cunningham went on to say that: “One in four Americans has a criminal record that could show up in a routine background check. With the increased usage of these checks, qualified applicants - many of whom have already paid the price for their past infractions – cannot even get their foot in the door to be considered for jobs.” The co-sponsors of the bill contend that recruiters simply throw out or disregard any applications when these boxes are “checked.”

Specifically, the proposed law would prevent New Jersey employers from requiring applicants in this state to “check” a box on job applications which would disclose an applicant’s criminal history. This is not to say that employers cannot still consider criminal histories; however, they must wait to inquire about criminal backgrounds until after the applicant has been found otherwise qualified for the position and a conditional offer of employment has been made.

This bill would also clearly identify which types of crimes can be considered as well as limiting disclosure to such crimes committed within a reasonable time frame. For example, after a conditional offer of employment has been made, an employer may consider the following types of crimes: (1) indictable offense convictions entered within ten years following an applicant’s release from custody or end of sentencing; (2) disorderly person convictions and municipal ordinance violations incurred within five years following release from custody or end of sentencing; (3) any pending criminal charges; and (4) any serious violent crimes including murder, attempted-murder, arson, sex offenses requiring registry and acts of terrorism committed at any point in time. Finally, the bill also provides certain safeguards for applicants who are denied employment, such as appeal and the right to challenge the accuracy of their criminal history.

Many employers may recognize this type of law, which is similar to those currently in place in many states including California, Connecticut and Massachusetts, as well as two cities in New Jersey (Atlantic City and Newark).

The Bottom Line. We will continue to track the progress of this bill and will keep you apprised of any developments. Employers should evaluate their current background screening policies and seek legal counsel to ensure compliance with current state law.

For more information about any of the topics covered in this issue of the Labor & Employment Law Alert, please contact:

*Jed L. Marcus Esq.
jmarcus@bressler.com
973-966-9678*

*Emily J. Bordens, Esq.
ebordens@bressler.com
973-660-4470*

The information contained in this Client Alert is for general informational purposes only and is neither presented nor intended to constitute legal advice or a legal opinion as to any particular matter. The reader should not act on the basis of any information contained herein without consulting first with his or her legal or other professional advisor with respect to the advisability of any specific course of action and the applicable law.

The views presented herein reflect the views of the individual author(s). They do not necessarily reflect the views of Bressler, Amery & Ross, P.C. or any of its other attorneys or clients.