

## Philadelphia “Bans the Box,” Precluding Inquiries Regarding Criminal History in Employment Applications

Philadelphia employers may no longer include check boxes in their employment applications asking prospective employees to indicate whether they have ever been convicted of a felony. Joining the national trend of restricting employer inquiries into job applicants' criminal histories, on April 18, 2011, Philadelphia Mayor Michael Nutter signed into law the Philadelphia Fair Criminal Record Screening Standards Ordinance (the “Ordinance”). The Ordinance, which will take effect on July 17, 2011, regulates when city agencies and private employers with ten or more employees in Philadelphia may inquire into an applicant's prior criminal history.

Specifically, under the new Ordinance, Philadelphia employers may not:

- make any inquiry about or take adverse action against any employee or applicant on the basis of any arrest or criminal accusation, which is not then pending against the person and did not result in a conviction; or
- make any inquiry regarding or require any applicant to disclose or reveal any criminal convictions during the application process until after the employer has conducted a first interview.

The goal of the Ordinance is to give individuals with criminal histories an opportunity to be judged on their own merit (at least through the completion of one interview) and to thereby improve their ability to reintegrate into the community. An interview is defined as “any direct contact by the employer with the applicant, whether in person or by telephone, to

discuss the employment being sought or the applicant's qualifications” and could be as simple as a telephone screening. If an employer does not conduct an interview, it may not at any time inquire into an applicant's criminal history. If an applicant voluntarily discloses a criminal conviction during the initial interview, the employer is permitted to discuss the criminal conviction disclosed. The prohibitions in the Ordinance will not apply if the inquiries or adverse actions are specifically authorized by another applicable law (e.g., laws related to banking, childcare, and education).

The new legislation does not require a covered employer to hire an individual with a criminal conviction; nor does it limit an employer's right to choose the most qualified applicant for the position at issue. Following an initial interview with the prospective employee, the employer may perform a background check and make inquiries regarding prior criminal convictions. However, Philadelphia employers must be

mindful of other state and federal laws that regulate or restrict their ability to access and use criminal history information including the Fair Credit Reporting Act, the Pennsylvania Criminal History Record Information Act (“PCHRIA”), Title VII of the Civil Rights Act and the Pennsylvania Human Relations Act. In particular, the Ordinance builds upon but does not modify the requirements of the PCHRIA, which precludes employers from considering felony and misdemeanor convictions in the hiring process unless the conviction relates to the applicant’s suitability for employment in the particular position in question. The PCHRIA also requires employers to notify an applicant in writing if they decide not to hire the applicant based in whole or in part on the applicant’s criminal history.

The Ordinance follows a growing trend of “ban the box” legislation that has been enacted in many states including Minnesota, Massachusetts, New Mexico, Connecticut, and Hawaii, as well as over two dozen municipalities, including Chicago, Boston, San Francisco, Baltimore, and Seattle. However, many of the jurisdictions that have implemented similar measures have limited them to public employers or public employers and private employers doing business with public entities. Philadelphia is the first U.S. city to pass a “ban the box” law that applies to private employers of ten or more employees as well as public employers, following the lead of both Hawaii and Massachusetts.

## Practical Guidance

- Philadelphia employers with ten or more employees should review their current employment applications and remove all questions related to criminal history.
- Philadelphia employers with ten or more employees should likewise train their human resource personnel, and any other employees who may conduct interviews, not to make any inquiries regarding an applicant’s prior criminal convictions or pending arrests until after the first interview.
- Employers operating in other jurisdictions should be aware of any restrictions on the access or use of criminal history information in the locations in which they conduct business and should review their application forms and hiring procedures to ensure that they are in compliance with all applicable laws.

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## Practice group contacts

If you have questions regarding the information in this update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys listed. Visit us at [www.dechert.com/employment](http://www.dechert.com/employment).

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