

EMPLOYMENT UPDATE

MARTIN CLEARWATER & BELL LLP

NYC Next Up To ‘Ban the Box’ On Job Applications

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On Monday, June 29, 2015, New York City Mayor, Bill De Blasio, signed into law the Fair Chance Act, which places restrictions on employers’ ability to ask job applicants about prior criminal convictions and arrest records.

Under the new law, private-sector employers cannot inquire about a job applicant’s criminal background unless the applicant is first given a conditional offer of employment. Only after a conditional offer is made can employers then ask applicants about their criminal history and commence a criminal background check. If, thereafter, the employer decides to take adverse action based on the applicant’s criminal record, the employer must provide a written explanation of the decision and hold the position open for three days to allow the applicant to respond.

The Act does not apply to positions where any law requires criminal background checks or where as a legal matter criminal convictions serve as a bar to employment. In addition, the law also exempts certain law enforcement positions, as well as a limited number of public trust positions.

One of the more immediate and tangible effects of this ‘ban the box’ legislation, is that it will now require employers to remove criminal conviction questions, along with any boxes on job applications that require a check-mark to indicate past criminal convictions, from job applications.

The Act is set to take effect in October of 2015. Enforcement of and penalties for employer violations of the Act will be governed by existing New York City Human Rights Law regulations, which can include imposition of civil penalties up to \$250,000.

Employers should revise their employment applications accordingly and ensure that their hiring committees are advised of, and trained to deal with applicants in accordance with these new procedures. For additional information or advice, employers are encouraged to speak with an attorney from MCB’s Employment & Labor Practice Group to prepare for the changes ahead.

If you have any questions or concerns regarding employment law related questions, please contact Greg Reilly at (212) 916-0920 or gregory.reilly@mcbllaw.com or Adam Guttell at (212) 916-0938 or adam.guttell@mcbllaw.com. For more information on MCB’s Employment and Labor Practice Group and its services, please visit www.mcblaw.com.

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