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Gov. Christie Signs 'Ban the Box' Bill Into Law in New Jersey

On August 11, New Jersey Gov. Chris Christie signed into law the Opportunity to Compete Act, which will prevent employers from asking job applicants about their criminal records until after the first job interview. This makes New Jersey the fifth state to expand "ban the box" protections to the private sector. The new law takes effect on March 1, 2015, and will preempt any similar local laws, such as the one passed in Newark in 2012.

The act applies to entities doing business in New Jersey and employing 15 or more employees over 20 calendar weeks. That number excludes domestic services employees, independent contractors, directors and trustees but includes interns and apprentices.

The act's two prohibitions are that employers cannot (1) mention criminal history in any job advertisement or (2) make verbal or written inquiries regarding an applicant's criminal record during the time period between an applicant's first inquiry about employment and the conclusion of the first interview. Thereafter, employers are free to inquire about, and refuse to hire an applicant because of, his or her criminal record, unless the relevant crime has been expunged and provided that such a decision is consistent with other applicable laws, rules and regulations (such as anti-discrimination laws and the Fair Credit Reporting Act). Employers, however, may legally ask about criminal histories sooner if an applicant voluntarily divulges the information. Employers may also legally inquire about criminal histories sooner if the applicant is seeking employment in law enforcement, corrections, the judiciary, homeland security, emergency management, or other positions for which a criminal background check is required by law, rule or regulation, such as banking.

The New Jersey Division on Civil Rights will be tasked with enforcement of the act and will be empowered to impose civil penalties up to $1,000 for the first violation, $5,000 for the second violation and $10,000 for each subsequent violation. Importantly, the act does not provide for a private cause of action.

The act underwent several major revisions before it passed the full New Jersey Senate and Assembly in June. Prior versions placed more onerous restrictions and procedures on employers, such as requiring conditional job offers before criminal background checks could be conducted, enumerating specific criminal offenses that could be considered by employers, and mandating specific procedural requirements and forms to demonstrate proper balancing of prior criminal histories against mitigating factors.

Employers have several months to familiarize themselves with the act's requirements and ensure compliance, including by removing any criminal background-related questions from their employment applications.