

Reminder: New York City Fair Chance Act, Limiting Criminal Inquiry, Effective October 27

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New York City employers must comply with the New York City Fair Chance Act, which restricts when employers can make inquiries about applicants' criminal histories, beginning October 27, 2015. (See our article, [New York City Enacts Ban-the-Box Legislation](#), for a detailed analysis of the law's requirements.)

Based on the text of the enactment as well as guidance issued to date by the New York City Commission on Human Rights, the agency entrusted to enforce the law, employers should ensure they are doing the following:

1. Unless all employees of your organization fall within a statutory exemption, remove any criminal inquiry from the employment application. Based on informal guidance issued by the Commission, the Commission appears to suggest that multi-state employers implement a separate employment application that does not contain any criminal inquiry for New York City positions rather than merely directing New York City applicants not to answer the query contained on a national employment application.
2. The Commission also has indicated that any references to background checks not per se required by law should be removed from the New York City employment application. Consider such deletion.
3. Implement strategies to ask the criminal inquiry following a conditional offer of employment. While the Commission has yet to exercise its charge under the statute to issue the form of inquiry, it is fair to assume that an employer can ask, "Have you been convicted of any criminal offense, excluding youthful offender adjudications?"
4. Refine practices for conducting the individualized analysis of criminal conviction history already required by New York State and City law. This need is now underscored by the fact that the Commission on October 23 issued a [model form](#) that employers may use to comply with the law's requirement to provide a written analysis to individuals as a precondition to disqualifying an individual based on criminal conviction background. As noted in the Commission's guidance, the form can be modified or adapted to an employer's preferred format if the material substance does not change.
5. Integrate the provision of the model form referenced above with the Fair Credit Reporting Act's mandated pre-adverse action process to the extent any disqualifying criminal conviction information was obtained from a consumer reporting agency.

Jackson Lewis employers are available to assist your organization with compliance with this enactment as well as the approximately 20 other state and local ban-the-box laws.

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