

## Baltimore Enacts 'Ban the Box' Law, Restricts Private Employers' Inquiries into Applicants' Criminal Backgrounds

By Emmett F. McGee

May 22, 2014

The Baltimore City Council has enacted the “Ban the Box Fair Criminal Record Screening Practices” Ordinance, which restricts the timing of pre-employment inquiries about a job applicant’s criminal history by certain private employers. The Ordinance will become effective August 13, 2014, 90 days after Mayor Stephanie Rawlings-Blake signed it into law.

Baltimore City is the first Maryland locality to enact a ban-the-box ordinance and reflects the growing trend to limit employers’ ability to make inquiries about an applicant’s criminal history. (See our articles, [San Francisco Enacts 'Ban the Box' Law](#) and [Seattle City Council Votes to Limit Inquiries into Job Applicants' Criminal Backgrounds](#).)

### Prohibitions

The Ordinance prohibits private employers employing at least 10 “full-time equivalent employees” in Baltimore City from making an inquiry of any kind about the criminal history of an applicant before a conditional offer of employment is made to the applicant.

“Applicant” is defined as any individual who is being considered or who requests to be considered for employment. A “conditional offer” of employment means the offer is conditioned solely on an inquiry into an applicant’s criminal background or some other contingency about which the applicant is informed at the time of the offer. “Employment” is defined broadly as “any work for pay” and “any form of vocational or educational training with or without pay.” Further, “employment” includes contractual, temporary, seasonal, or contingent work and work through the services of a temporary or other employment agency.

Before a conditional offer is made, a covered private employer may not:

- Require any applicant to disclose or reveal whether he or she has a criminal record or otherwise has had criminal accusations brought against him or her;
- Conduct a criminal background check on the applicant; or
- Otherwise make any inquiry of the applicant or of others about whether the applicant has a criminal record or otherwise has had criminal accusations brought against him or her.

Although the Ordinance defines the term “conviction” as “any sentence arising from a verdict or pleas of guilty or nolo contendere,” it does not restrict an employer’s pre-conditional offer inquiries only to convictions. Rather, the Ordinance broadly prohibits an employer from obtaining *any information* in an applicant’s criminal background until a condition offer of employment is made.

Employers also are prohibited from discriminating or retaliating against any individual who complains that an employer has violated the provisions of the Ordinance.

### Exceptions

The Ordinance does not apply to any inquiry into an applicant’s criminal history that is required or authorized by another applicable city, federal, or state law or regulation. The Ordinance also specifically exempts facilities providing services to minors or vulnerable adults, defining the latter as “an adult who lacks the physical or mental capacity to provide for his or her own daily needs.”

### Enforcement

Employees and applicants who believe that an employer has violated the Ordinance may file a complaint with the Baltimore Community Relations Commission (“BCRC”). The BCRC will investigate the complaint in the same manner as it investigates discrimination claims and, if a violation is found, may award an applicant or employee back pay, reinstatement, compensatory damages, and reasonable attorney’s fees. A

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decision of the BCRC may be appealed to the Circuit Court for Baltimore City. Any person who violates the Ordinance also may face criminal penalties of up to a \$500 fine and 90 days in prison for each violation.

## Implications for Employers

Employers in Baltimore City should review and revise their policies and practices to ensure compliance with the Ordinance. Employers should:

- Ensure their employment application does not make any inquiry about an applicant's criminal history.
- Educate their Human Resources and management staff who conduct interviews that they may not make any inquiries about an applicant's criminal history during the interview process, including inquiries of applicants for paid or unpaid educational or vocational training programs, such as internships. Such inquiries may be made only *after a conditional offer* of employment is made.
- Make conditional offers of employment to applicants *in writing*, and make clear the offer is conditioned on an inquiry into an applicant's criminal background and other any conditions that may be applicable.
- Ensure that any temporary agency, recruiting firm, or other similar agency from which an employer obtains applicants or temporary workers is in compliance with the provisions of the Ordinance.
- Ensure that any third party vendor on which the employer relies to conduct background checks of applicants or temporary workers is in compliance with the provisions of the Ordinance. Consider developing written procedures to ensure that any such third party vendor does not conduct a criminal background screen until after it has received written confirmation from the employer that a conditional offer has been extended.

Although the Ordinance restricts the timing of inquiries into an applicant's criminal history, it does not preclude an employer from making an employment decision based on an applicant's criminal history. Furthermore, because of the Equal Employment Opportunity Commission's recent attention to criminal background checks (see [EEOC Issues New Enforcement Guidance on Use of Arrest and Conviction Records in Employment](#)) and because of applicable laws governing background checks other than the Ordinance, this is also an opportunity for employers to review their hiring practices with respect to:

- use of criminal background information under EEOC guidance;
- restrictions on use of credit histories under the Maryland Job Applicant Fairness Act, and
- compliance with state and federal fair credit reporting laws, such as the Fair Credit Reporting Act.

Jackson Lewis attorneys are available to assist employers on this and other workplace law issues. If you have questions about the Ordinance or need compliance assistance, please contact the Jackson Lewis attorney with whom you regularly work.

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