

# Philadelphia Enacts Key Changes to ‘Ban the Box,’ Credit Screening Ordinances

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Changes to Philadelphia law will further restrict employers' use and reliance on applicant, current employee, and independent contractor background information and affect the employee application and employee management process.

Amendments to Philadelphia's Unlawful Credit Screening Practices in Employment ordinance and Fair Criminal Record Screenings Standards ordinance (FCRSS), commonly referred to as the "Ban the Box" regulation, took effect March 21, 2021, and April 1, 2021, respectively. The regulations supplement the governing requirements of the federal Fair Credit Reporting Act (FCRA) and Pennsylvania's Criminal History Record Information Act (CHRIA).

### Changes to Unlawful Credit Screening Practices in Employment

**Bill No. 200614** amends the Unlawful Credit Screening Practices in Employment ordinance to clarify that Philadelphia employers following the FCRA's adverse action regulations are also in compliance Philadelphia requirements. The credit ban ordinance requires employers to disclose their reliance on credit information to the applicant or employee in writing, identify the particular information upon which the adverse decision was based, and "give the employee or applicant an opportunity to explain the circumstances surrounding the information at issue before taking any such adverse action."

In addition, **Bill No. 200413 eliminates** previous exceptions on the use of employee or applicant credit screenings. Prior to the amendment's implementation, employers were precluded from conducting credit screenings for employees, but-for employment with "any law enforcement agency or financial institution." The amendment removes that blanket exception and provides that law enforcement agencies or financial institutions may conduct credit screening only under specific circumstances, such as where the credit information "must be obtained pursuant to state or federal law" or the "job requires an employee to be bonded under City, state, or federal law."

### Changes to Fair Criminal Record Screening Standards Ordinance

An amendment to the FCRSS affords current employees the same employment protections as applicants relative to their criminal background histories.

Since its 2016 enactment, the FCRSS has prohibited Philadelphia employers from asking potential employees (or current employees applying for another position) about criminal backgrounds on job applications or during job interviews. Further, Philadelphia employers could run a criminal background check only after making a conditional offer of employment. If the criminal inquiry or background check reveals a conviction within seven years, the employer must consider (i) the nature of the offense and the time that has passed since it occurred, (ii) the particular duties of the

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job being sought, and (iii) the applicant's job history, character references, and any evidence of rehabilitation. Employers may reject applicants based on criminal records only if the potential employee's history suggests an unacceptable risk to the business or to others. With its emphasis on the application process, it mirrored the language of the Pennsylvania CHRIA.

**Bill No. 200479** amends the FCRSS to make it applicable not only to the application or transfer process, but to the use of any current employee criminal histories. The law's restrictions and procedural requirements now apply also to *current employees*, as well as applicants in Philadelphia. Moreover, independent contractors and gig workers are afforded the same protections as full-time or part-time employees or applicants.

The amendment also provides that, even where criminal background clearance is a legal requirement for a particular position, a conditional offer must precede a criminal background check or criminal inquiry. Due to language ambiguities, it is unclear as to whether a criminal inquiry even post-conditional offer is permissible if such inquiry is not mandated by law.

The new provision permits an award of "liquidated damages, equal to the payment of the maximum allowable salary for the job subject to the complaint for a period of one month," up to a maximum of \$5,000.

Jackson Lewis attorneys are available to answer questions regarding the changes, review policies and practices, and provide training.

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