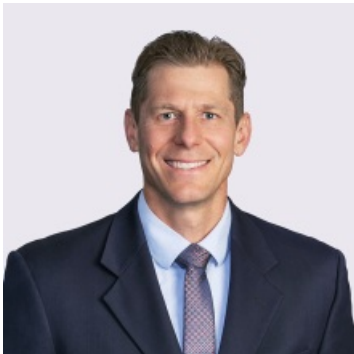


Colorado Enacts ‘Ban the Box’ Legislation to Take Effect in September 2019

By Ryan P. Lessmann & Susan M. Corcoran

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Meet the Authors

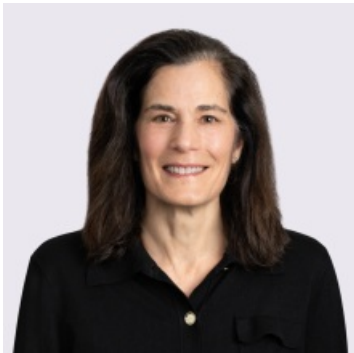


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In an effort to prevent persons with criminal records from being automatically ruled out for job vacancies, Colorado Governor Jared Polis has signed “ban the box” legislation. The [new law](#) will go into effect in September 2019 for employers with at least 11 employees, and employers with fewer than 11 employees have until September 2021 to comply. This makes Colorado the 13th state to enact “ban the box” legislation for private employers.

House Bill 19-1025, also referred to as the “Colorado Chance to Compete Act,” prohibits employers from asking about an applicant’s criminal history in an initial job application. (Ban the box legislation regarding public sector employers, specifically state agencies, has existed since 2012, pursuant to bill [12-1263](#).)

The Act also prohibits an employer from stating in an employment position advertisement that a person with a criminal history may not apply.

The new law asserts that its intent is to provide those with criminal backgrounds a better chance to compete for a job in the workforce and grow Colorado’s economy. It is also intended to promote safer communities and allow employers to have access to an applicant’s complete criminal history. The new law does not prevent employers from conducting background checks and expressly allows an employer to obtain an applicant’s publicly available criminal background report at any time; however, in that regard, employers still should be mindful of best practices when screening candidates for hire, which typically include not assessing anyone’s criminal history background until post-offer unless required by law.

The Act broadly defines an “employer” as any person that regularly engages the services of individuals to perform services of any nature. This includes an employer’s agent, representative, or designee, as well as employment agencies.

The state, local governments, and quasi-governmental entities or political subdivisions of the state are expressly excluded from the definition of employer. The Act also does not apply to positions where a law prohibits employing persons with a specific criminal history, to positions designated by the employer to participate in a federal, state, or local government program to encourage the employment of people with criminal histories, and to positions where a law requires an employer to conduct a criminal background check.

The new legislation does not create or provide an avenue for a private cause of action. It also does not create a protected class.

An aggrieved individual may file a complaint with the Colorado Department of Labor (DOL) within one year of an alleged violation of the Act. DOL will then initiate an investigation of the complaint, unless it determines the complaint is without merit. If the

DOL finds a violation, the employer will be liable for the following penalties:

- First violation – a warning and an order requiring compliance within 30 days
- Second violation – an order requiring compliance within 30 days and a civil penalty not to exceed \$1,000
- Third or subsequent violation – an order requiring compliance within 30 days and a civil penalty not to exceed \$2,500

The Act provides that the DOL will adopt rules regarding the handling of complaints filed against employers, including requirements for providing notice to an employer of an alleged violation and recordkeeping during an investigation.

Colorado employers should begin reviewing their employment applications, and their application processes, including interview guides, sample questions, and job postings and advertisements, to ensure compliance with the legislation's requirements. Employers also should make sure key employees in the hiring process are trained about the new prohibitions.

Please contact your Jackson Lewis attorney to discuss these developments and your specific organizational needs.

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