State Legislation

California (administrative directive applies to state employment) 2010
The California State Personnel Board revised the State Examination/Employment Application for state employees by removing questions asking about criminal convictions. The one exception is that if an applicant is applying for a classification or position “to which a criminal record is pertinent,” the applicant is required to complete the Criminal Record Supplemental Questionnaire. The questionnaire restricts inquiries to felonies and domestic violence misdemeanors.

Connecticut (applies to state employment; job-related factors; limits on information) 2010
Connecticut’s House Bill 5207 to ban the box initially passed both the house and senate and was vetoed by the Governor. Legislators then overrode the veto to pass the bill in 2010. The law prohibits applicants from being disqualified for licensure or employment by state agencies solely because of a conviction, unless otherwise disqualified. State employers and licensing agencies may only process a criminal background check an applicant has been deemed otherwise qualified for the job. Existing law (§ 46a-80) required that the employer or licensing agency consider the following before making an employment or licensure determination:

- the nature of the crime and its relationship to the job or occupation
- rehabilitation information
- (3) the time elapsed since the conviction or release

Records of arrests that did not lead to conviction, or records of convictions that have been erased may not be used for consideration.

Hawaii (applies to public and private employment; limits on information) 1998
In 1998, Hawaii became the first state to ban the box for both public and private employment applications. The bill prohibits employers from inquiring into an applicant’s criminal history until after a conditional offer of employment has been made. The offer may be withdrawn if the applicant’s conviction record bears a “rational relationship” to the duties and responsibilities related to the position. Under the ban-the-box law, employers may only consider an employee’s conviction record within the most recent 10 years, not counting periods of incarceration.

The proceeding is not legal advice, either expressed or implied and is provided for educational purposes only. We recommend you seek the advice of your corporate legal counsel for all aspects of employment law.
Maryland (applies to state government employers) 2013
Maryland Governor, Martin O’Malley, approved a “ban-the-box” law, which will go into effect on October 01, 2013. The bill states that Maryland state government employers may not inquire into applicants’ criminal histories until following an employment interview. The law specifically does not prohibit Maryland state government employers from “notifying an applicant for employment that certain prior criminal convictions may prohibit employment in some positions.” The law applies to employees in the Judicial, Legislative, and Executive branches of the Maryland State Government, with exception to:

- a position in the Department of Public Safety and Correctional Service
- a position for which an appointing authority has a statutory duty to conduct a criminal history records check
- a position in the Office of the Sheriff for any county

Massachusetts (applies to public and private employment; limits on information) 2010
Governor Deval Patrick (D) signed the Act on August 6, 2010 prohibiting employers from asking on their employment application whether an applicant has been convicted or any crime unless applicable to the position they are applying for. Effective May 4, 2012, the law requires that applicants receive a copy of their background report prior to being asked about their criminal history and if an adverse decision is made based on the background report.

Minnesota (applies to public employment; job-related factors; limits on information) (2009)
In May 2009, Governor Tim Pawlenty (R) signed HF 1301 adding section 364.021 to Minn. Stat. § 364 et seq. The amendment prohibits public employers from inquiring into or considering an applicant’s criminal history until after the applicant has been selected for an interview by the state, its agency, or political subdivision.

Minnesota (applies to private employment, limits on timing) (2013)
Governor Mark Dayton signed legislation prohibiting private employers from inquiring about applicants’ criminal history until either an interview or until after a job offer has been made. While this statute does dictate the timing of the question posed to applicants, it does not stop employers from taking a look at candidates’ criminal histories as part of the hiring process. This law will go into effect on January 1st, 2014.

New Mexico (applies to public employment; limits on information) 2010
On March 8, 2010, Governor Bill Richardson (D) signed this measure into law adding N.M. Stat. § 28-2-3 to the existing “Criminal Offender Employment Act” (1974). It prohibits state agencies from inquiring into an applicant’s conviction history on an initial employment application until an applicant has been “selected as a finalist.” The law permits convictions to be considered when determining eligibility for public employment or licensure, but convictions “may not operate as an automatic bar” to the candidate.

Rhode Island A new law going into effect January 1st, 2014 dictates the timing of when public and private employers who employs more than 4 employees will be able to inquire about criminal history. Employers will be unable to ask (either in writing or verbally) whether someone has been arrested, charged or convicted of any crime. An employer is allowed to ask about criminal convictions at any time following the first interview.
Local Ordinances/Resolutions

Alameda County, CA (Oakland & Berkeley, CA area; resolution applies to County) October 2006
The Alameda County Board of Supervisors adopted a resolution urging the Civil Service Commission and the Department of Human Resources to implement a "pilot project . . . in order to mitigate or eliminate the negative impact against individuals who have been incarcerated or otherwise have criminal convictions to assist with the successful reintegration into the community." Starting in March 2007, Alameda County removed the question on the job application that required all applicants to list their criminal convictions. Self-disclosure of criminal history information does not occur until the last step of the application process and fingerprinting for background checks will only be performed after a conditional offer. In addition to protect against potential discrimination, a special unit in the Human Resources Department performs an analysis to determine if the conviction is, in fact, related to the specific functions of the job.

Carson, CA (city council resolution applies to City) March 6, 2012
The City Council of Carson passed a resolution to support ban the box efforts. The resolution requires delaying applicant’s disclosure of past convictions until after an offer of employment is made. At that point, a separate conviction history form is collected and investigated for an individualized assessment that considers the length of time since the conviction, relevance to the position, and evidence of rehabilitation.

Compton, CA (ordinance applies to City and contractors) April 5, 2011
The City of Compton passed a resolution to provide equal employment opportunities for people with criminal records, effective July 1, 2011. A criminal background check is postponed until after a conditional offer of employment is made. The city prohibits the consideration of any convictions that are not job-related in the course of an employment decision. Factors to consider include:

- whether the position provides the opportunity for the commission of a similar offense
- whether the individual has committed other offenses since the conviction
- the nature and gravity of the offense and
- time since the offense

Additionally, the City requires employers that receive local government contracts to mirror the same hiring policies.

Richmond, CA (city council resolution applies to City) November 22, 2011
The Richmond City Council passed a measure to ban the box for city applications. The City may only inquire about criminal backgrounds for those positions in which a background check is required by law or justified by business necessity.

San Francisco, CA (board of supervisors resolution applies to City and County) 2005
In 2005, the San Francisco Board of Supervisors approved a resolution calling for San Francisco to remove the request for criminal history information on the initial job application for public employment and this resolution was implemented as a municipal hiring policy. An individual's past criminal convictions can only be considered after an applicant has been identified as a finalist for a position. The exception is for those jobs where state or local laws expressly bar people with convictions from employment, in which case the City will start its background review at an earlier stage of the hiring process.

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Washington, District of Columbia (ordinance applies to District) December 2010
Passed the Returning Citizens Public Employment Inclusion Act of 2010 and after congressional review, the law went into effect in 2011. For non-covered positions, public employers are unable to ask about an applicant’s criminal history during the initial screening of applications. If a public employer considers an applicant’s criminal history then they must allow the applicant to be able to provide an explanation of their history to the employer. The employer must then consider rehabilitation and other evidence of good conduct following the offense. Public employers are required to consider the beneficial public policy of ensuring access to jobs for people with a criminal record.

Bridgeport, CT (civil service rules apply to City) October 2009
Bridgeport’s City Council ratified changes to the City’s civil service rules regarding criminal history investigations of applicants. Under the rules, the Personnel Director will seek information about applicants’ criminal histories only after the applicant has been found “otherwise eligible” to take the civil service examination. The initial employment application includes a disclaimer that criminal history information will be sought later in the application or examination process. In addition to considering the criminal histories of applicants later in the hiring process, the rules require the Personnel Director to consider the following factors when making an employment decision based on a person’s criminal history:

- the nature and seriousness of the offense
- how much time since the conviction
- how old they were at the time of the offense
- the degree to which the conviction is related to the duties and responsibilities of the job
- the degree to which the conviction has on the applicants’ ability to perform such duties and responsibilities
- evidence of rehabilitation
- the interest of the City in protecting property and the welfare and safety of public and employees

Candidates who are disqualified because of their criminal record have the right to appeal the Personnel Director’s decision to the Civil Service Commission. The Commission is then able to make a choice if they can “grant the appellant such relief as the Commission deems appropriate or to deny the appeal.”

New Haven, CT (ordinance applies to City and vendors) February 2009
The City of New Haven’s Board of Alderman approved an ordinance that requires the City and its vendors to not inquire about an applicant’s conviction history until after it has been determined that the applicant is otherwise qualified for the position. They also dictate that they must wait to conduct a criminal background check until the job applicant is chosen for the job and has received a conditional offer of employment. The City’s Human Resources Department then evaluates the applicant’s criminal history, keeping all information confidential within the Department. The ordinance also provides applicants with a copy of their conviction history report and the opportunity to appeal adverse employment decisions based upon a past conviction within 10 days of receiving notice of the decision not to hire.
Norwich, CT (ordinance applies to City) December 2008
Norwich’s City Council passed an ordinance that requires the removal of the question inquiring into a person’s criminal background from the initial application for all city jobs. Although the City continues to background check all employees before a binding offer of employment, it now does so only after an applicant has been interviewed and a conditional offer of employment has been made. Once an applicant has been determined to be a finalist for a position, they will be required to provide criminal conviction information.

Wilmington, DE (Mayoral Executive Order and city council resolution apply to City) December 6, 2012
The Wilmington City Council passed a resolution to ban the box on all City employment applications. The Executive Order 2012-3 was signed on December 10, 2012, banning the box on job applications for all city positions. Wilmington will now conduct criminal background checks for non-uniformed positions after a conditional offer of employment has been extended to their applicants.

Jacksonville, FL (ordinance applies to City) 2008
The City Council adopted an ordinance reforming both its hiring procedures and its contractor bidding policies. In July 2009, the City’s Human Resources Department released the revised standard. The resolution states that department heads will “not inquire about or consider criminal background check information in making a hiring decision.” Instead, “criminal information disclosure is required as part of the post-offer new hire process.” (emphasis in original). Contractors are mandated to keep track of job opportunities for people with criminal records and report back to the City.

Tampa, FL (ordinance applies to City) January 14, 2013
The Mayor of Tampa signed the ban the box ordinance approved by the City Council. The ordinance removes the question inquiring into an applicant’s criminal history from the initial application for employment. It also requires that the City of Tampa wait to seek an applicant’s authorization to conduct a background check until the applicant is selected as a final contender for a position.

Atlanta, GA (ordinance applies to City) January 1, 2013
The City of Atlanta removed the box from their application. This was an administrative action by the Commissioner of Human Resource, with Mayor Reed signing off on the resolution.

Chicago, IL (Mayor’s initiative applies to City) May 2004
Chicago Mayor Richard Daley created the “Mayoral Policy Caucus on Prisoner Reentry” in January 2006. The Caucus asked for broad reforms of City policy and at the same time, Mayor Daley announced several major "reentry" initiatives, including reform of the City’s hiring policies as recommended by the Caucus. Implementing the Mayor’s hiring policy, the Chicago Department of Human Resources has issued guidelines imposing standards on all City agencies regulating hiring decisions related to people with criminal records. Chicago now requires all agencies to take into account the following:

- the age of an individual's criminal record
- the seriousness of the offense
- evidence of rehabilitation
- and other mitigating factors before making hiring decisions

As part of the hiring process, the City also revised its job application in February 2007 to remove the question about criminal history. After the City makes a conditional offer of employment, the applicant fills out a screening questionnaire card that requires disclosure of any criminal record.

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**Boston, MA** (Ordinance applies to City and vendors) July 2006

Boston City Council passed an ordinance to remove the questions about criminal history from the job application. This would require an estimated 50,000 private vendors that do business with the City to follow the City’s hiring standards. The revised job application begins with an anti-discrimination statement that Boston complies with all state and federal equal employment opportunity laws, while also listing “ex-offender status” as a classification protected under the civil rights laws of the City. Under the policy, background checks are not required for all positions. Only when required by law or when the City or vendor has made a “good faith determination that the relevant position is of such sensitivity,” is a background check conducted on “otherwise qualified” applicants for a position. The ordinance includes an appeal and the right to present information related to the “accuracy and/or relevancy” of the criminal record.

**Worcester, MA** (ordinance applies to City and vendors) June 2009.

Worcester’s City Council passed the Fair CORI Practices Ordinance. This ordinance applies to “all persons and businesses supplying goods and/or services to the city of Worcester.” Per the policy, public employers and vendors who do business with the City are prohibited from inquiring into an applicant’s criminal history on any initial employment application, and may only perform a background check once an applicant is identified as otherwise qualified. Background checks may only be performed when mandated by law, or when the city or vendor “determines that the position in question is of such sensitivity” that a review of the applicant’s criminal history is warranted. The comprehensive law also requires that the person reviewing the background report be trained to do so, and that they apply a list of factors to be considered. Finally, applicants may appeal if an adverse decision is made based on the criminal history.

**Baltimore, MD** (board of estimates hiring policy applies to City) December 2007

With the backing of Mayor Sheila Dixon, the City of Baltimore's Board of Estimates approved changes to the City's administrative hiring policy. The Board of Estimates is the governing body that oversees the fiscal and administrative functions of the City. In accordance with the policy, the City removed the criminal history question from its job application. Applicants are not asked about their criminal history on the initial application. Instead, where applicable, the applicant's criminal history is reviewed at the final stages in the hiring process.

The City also implemented a policy to determine which positions qualified as “Positions of Trust” and thus require a background check. Employment applications for positions that are not positions of trust do not require applicants to disclose prior convictions or any other criminal history information.

**Detroit, MI** (ordinance applies to City and vendors) September 2010

Detroit’s City Council voted to ban the box on City applications. The amendments to the Detroit City Code prohibit inquiries or consideration concerning criminal convictions for City employees until an applicant is interviewed or is found to be otherwise qualified for employment by the City. The ordinance further revises the City’s job application to include a statement that “criminal convictions are not a bar to City employment, provided, that the prior criminal activity is not directly related to the position being sought.” As of July 1, 2012, the City has required business vendors and contractors to remove the conviction history question from job applications.
Muskegon County, MI (Northwest of Grand Rapids, MI area; applies to County) January 12, 2012
The Muskegon County Board of Commissioners voted to remove inquiry into criminal history from the written application for all opportunities unless required by local, state, or federal law.

Minneapolis, MN (city council resolution applies to City) in December 2006
Minneapolis passed a resolution that included banning the box, making a “good faith” determination of which positions require background checks, and performing background checks on applicants only after they have been determined to be otherwise qualified.

St. Paul, MN (Mayor’s directive and city council resolution apply to City) December 2006
The City Council amended its employment application to remove questions regarding criminal history. That same month, the City Council approved a resolution calling on the City to “make a good faith determination as to which specific positions of employment are of such sensitivity and responsibility that a background check is warranted.” The resolution also mandated that background checks be performed only after an applicant is determined to be otherwise qualified for that position.

Kansas City, MO (ordinance applies to the City) April 4, 2013
Kansas City passed an ordinance to prohibits the Civil Service Commission from asking an applicant questions about a prior conviction until after an otherwise qualified applicant had been certified as eligible and the applicant is interviewed for the position.

Carrboro, NC (ordinance applies to Town) October 16, 2012
The Carrboro Board of Alderman voted to ban the box on Town of Carrboro job applications. The question has been removed from the Town of Carrboro employment application.

Cumberland County, NC (Fayetteville, NC area; applies to County) September 6, 2011
The Cumberland County Commissioners voted to ban the box and implement a new pre-employment background check policy.

Atlantic City, NJ (ordinance applies to City and vendors) December 23, 2011
Atlantic City, NJ banned the box for city positions. The ordinance also requires all vendors doing business with the City to have practices, policies and standards that are consistent with the City’s, and makes consideration of vendors’ hiring policies, practices and standards part of the criteria to be considered when awarding contracts. The ordinance permits a background check only after a conditional offer has been given, requires consideration of rehabilitation and the EEOC criteria, and gives applicants a right to appeal a denial of employment.

Newark, NJ (ordinance applies to City, private employers, licensing, and housing) September 19, 2012
The Municipal Council passed a ban the box ordinance that applies to the City, private employers, local licensing, and housing. Inquiries into an applicant’s criminal history are delayed until a conditional offer of employment is made by the employer, and there is a limited “lookback” period for offenses, ranging from eight years for indictable offenses and five years for disorderly persons convictions or municipal ordinance convictions. The ordinance also includes a prohibition on advertisements that limit eligibility based on the criminal record; an enforcement provision with fines for violations; and detailed mandated notices to denied applicants.
**Buffalo, NY** (Ordinance applies to City, vendors, public employers and private employers) June 10, 2013
Prohibits public and private employers within the City of Buffalo, and vendors doing business with the city, from inquiring into a criminal record during the application process or prior to an initial interview.

**New York City, NY** (executive order applies to City and some contractors) August 2011
Mayor Bloomberg signed Executive Order No. 151 banning the box. The policy prohibits City agencies from asking about an applicant’s criminal history on initial job application documents or in the initial interview. When an agency does review an applicant’s criminal history, it is limited to considering felony convictions, unsealed misdemeanor convictions, and pending charges. Agencies may request waivers to make additional inquiries. The City has now extended the ban the box policy to contractors doing business with the Human Services Department. These contractors may not make inquiries about convictions until after the first interview.

**Cincinnati, OH** (city council motion applies to City) August 2010
The Cincinnati City Council passed a motion in support of fair hiring. Cincinnati’s employment applications no longer request information on an applicant’s criminal history and background checks are conducted only after a contingent offer of employment has been made. If a criminal background check is the basis for denying employment, the applicant receives a copy of all documents containing criminal record information and is given at least 10 business days to dispute or correct the included information. Finally, when considering an applicant’s criminal history in making an employment decision, the Cincinnati Human Resources Department must consider certain criteria, including whether the past offense(s) directly relate to the job responsibilities, the age of the person at the time of the offense(s), and any documentation or testimony demonstrating an applicant’s rehabilitation.

**Philadelphia, PA** (ordinance applies to City and private employers) March 31, 2011
Philadelphia became the first city to ban the box for both public and private positions. The ordinance prohibits any employer from asking about, considering, or sharing information regarding non-conviction arrests that are not pending. The ordinance further prohibits inquiry into an applicant’s conviction history “during the application process,” defined as the time beginning when an applicant inquires about the employment and ending when the employer has accepted an application, or “before and during the first interview.” Employers must then wait until after an applicant has completed an application and had a first interview before inquiring into the applicant’s conviction history. The ordinance provides an exception from these rules “if the inquires or adverse actions prohibited [above] are specifically authorized by any other applicable law.”

**Pittsburgh, PA** (ordinances apply to City and contractors) December 17, 2012
The Pittsburgh City Council passed two ban the box ordinances; one that applies to city employment and one that applies to contractors. The ordinance the applies to employment states that (with some exceptions), the City will not inquire about an applicant’s conviction history until after it has been determined that the applicant is otherwise qualified for the position.
Memphis, TN (ordinance applies to City) June 2010
The Memphis City Council passed an ordinance to ban the box and, “except as otherwise dictated by state and federal law,” permits inquiry into an applicant’s criminal history only after the applicant has been determined to be otherwise qualified. However, the ordinance still requires applicants to complete a form listing their entire criminal history prior to the City conducting a background check. If, after conducting a background investigation, the City makes an adverse hiring decision, the applicant is entitled to a copy of his or her “conviction history report with a highlight(s) of the particular conviction(s) that relate to the job’s responsibilities, thus warranting a denial of employment.” The applicant may then provide information rebutting the accuracy and/or relevance of the conviction history report. The ordinance includes a list of factors the City must consider when making an employment determination based on an applicant’s conviction record.

Austin, TX (ordinance applies to City) October 2008
The City approved a “Ban the Box” ordinance. The criminal background investigation questions were removed from the on-line employment ordinance. For non-safety/law enforcement jobs, criminal background investigations are required only for positions that have financial responsibility or work with children, the disabled or elderly. When the job falls in one of these categories, the background investigation is undertaken only after an applicant has been selected as the top candidate. For public safety/law enforcement positions, the Austin Police Department conducts the criminal background investigation.

Richmond, VA (ordinance applies to the City) March 25, 2013
The Richmond City Council passed an ordinance to ban the box on City job applications. Except when required by federal or state law or for positions that the City Council, by resolution, has determined should be exempt, initial job applications may no longer inquire into an applicant’s criminal conviction history. Attached to the resolution is a document that includes those positions determined by the City Council to be exempt from the ban the box ordinance.

Seattle, WA (ordinance applies to City and some private employers) June 10, 2013
The Seattle City Council voted to ban the box. The Ordinance prohibits employers from requiring job applicants (for jobs that will be performed in whole or substantial part - at least 50% of the time – within the city) to provide information regarding their criminal history until after the employer had completed initial screening of applications or resumes to eliminate unqualified applicants. While employers may inquire about an individual's criminal history after they have completed an initial screening to eliminate unqualified applicants, they may not reject a qualified applicant solely based on their criminal record unless they have: identified to the employee or applicant the record or information on which they are basing their employment decision; provided the applicant or employee a reasonable opportunity to explain or correct the information and hold the position open for a minimum of two business days after notifying the applicant or employee to provide them a meaningful opportunity to respond; and, a "legitimate business reason” for making the employment decision.