

3.1: What are Ban-the-Box Laws?



View of outreach materials are seen at a press conference for a Ban The Box Petition delivery to the White House on Oct. 26, 2015. [Bloomberg News](#).

Photographer: Larry French/Getty Images for ColorOfChange.org

Ban the Box

Dozens of cities and states restrict employers from asking job applicants about criminal convictions through “ban-the-box” laws.

Ban the box refers to the check box on employment applications asking whether the candidate has ever been convicted of a crime. Ban-the-box laws require hiring managers to put off asking about a candidate’s criminal history until after an interview has been conducted or a provisional job offer has been extended.

Ban-the-box laws prohibit employers from asking about a person's criminal history on a job application.

By Sachi Clements, Attorney

If you've been reading the news lately, you might have heard of something called a "ban-thebox" law. More than a dozen states and the District of Columbia, as well as many cities, have passed these types of laws in the past few years.

Ban-the-box laws help the estimated 30% of adults with a criminal past get a fair shot at finding work, by encouraging employers to assess their qualifications and skills before denying employment.

History of Ban-the-Box Laws

At some point in their lives, most people have filled out a standard job application with a set of common questions. One of those questions is: "Have you ever been convicted of a crime? Check yes or no." Many applicants reluctantly check "yes," knowing that it often means the end of the application process for them.

Employers often used the question to weed out applicants with a criminal record, without considering the specifics of the crime, how long ago it happened, or what the applicants have been up to since then.

Not surprisingly, those with a criminal past face high unemployment rates. Studies have shown that lack of employment leads to high recidivism rates. In other words, ex-offenders who are out of work are more likely to commit further crimes.

There's also a concern of racial discrimination. One type of discrimination, called disparate impact discrimination, happens when a seemingly neutral policy disproportionately affects members of a particular race.

Because African American and Latino men are arrested and convicted at disproportionately higher rates than Caucasian men, asking about criminal records has a disproportionate impact on them.

What Does a Ban-the-Box Law Do?

All ban-the-box laws prohibit employers from asking applicants about criminal history on an initial job application. However, some go further, requiring employers to wait until after they have conducted an interview or made a conditional offer of employment

before asking about criminal history.

A few laws also impose additional requirements. For example, in California, employers must engage in a multi-factored individual analysis of whether the criminal record justifies denying employment. And, if the employer decides to deny employment based on a criminal record, it must provide the applicant with notice and an opportunity to provide mitigating evidence that lessens the impact of the conviction.

Most ban-the-box laws contain exemptions for security-related jobs and those that require working with children, vulnerable adults, and the elderly.

Which Employers Must Comply With Ban-the-Box Laws?

To date, there is no federal ban-the-box law; these are laws being passed by states and cities. Initially, these laws applied to government employers only. However, more states and cities are passing laws that apply to government and private employers alike.

States With Ban the Box Laws

Currently, 15 states (and the District of Columbia) have ban-the-box laws that apply to private employers. They are:

- California
- Colorado
- Connecticut
- Hawaii
- Illinois
- Maine
- Maryland
- Massachusetts
- Minnesota
- New Jersey
- New Mexico
- Oregon
- Rhode Island
- Vermont, and
- Washington.

More than 35 states have laws that apply to government employers. To learn about your state's rules on arrest and conviction records, see our records during employment. state articles on considering criminal

Several cities have their own laws, especially ones in major metropolitan areas. To learn whether your city has one of these laws, contact your local government.

What Other Laws Should Employers Be Aware Of?

Even in states that don't have ban-the-box laws, a rigid practice of asking about criminal history and denying employment can violate federal anti-discrimination laws.

As mentioned above, categorically denying employment to applicants within criminal records can have a disproportionate impact on certain racial groups. The Equal Employment Opportunity Commission (EEOC) has warned against this practice, issuing guidelines to follow in order to avoid discrimination. It includes conducting an individualized analysis considering factors such as:

- the nature of the job
- the severity of the offense, and
- how much time has passed.

Some states have additional rules that apply to certain types of criminal records. For example, many states prohibit employers from considering sealed or expunged criminal records, arrests that didn't lead to conviction, or juvenile records. To learn more, select your state from our state articles on considering criminal records during employment.

Contact an Employment Lawyer

Because this is a complex area of the law, and the rules vary widely by location, it's a good idea to consult with a lawyer about your practices.

SOURCE: "[What is a Ban the Box Law?](#)", NOLO website, May 25, 2022.

Interactive Website

To learn more about this topic and to see what states are required to be in compliance with Ban the Box laws, go to the [Accurate Ban the Box website](#).

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