



## Employment Law Update

### The Trend to "Ban the Box"

"Ban the Box" laws are becoming increasingly common around the country. Indeed, nearly half of all U.S. states, as well as various cities and counties have adopted a "ban the box" provision in one form or another-though Utah has yet to jump on the bandwagon. "Ban the box" laws make it illegal for employers to ask job applicants about arrest and conviction records until later on in the application process. Typically, however, employers can inquire about an employee's conviction record once they have determined that the applicant meets the minimum employment qualifications. While these laws vary greatly from jurisdiction to jurisdiction, generally an employer is allowed to conduct a background check and/or ask about conviction records after the applicant has been selected for an interview or once a conditional job offer has been extended. Most states currently enforce these provisions against only public employers, although several states have started to impose them upon private employers as well.



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"Ban the Box" proponents contend that by waiting until later in the decision-making process to inquire about criminal convictions, employers give more potential employees a fair chance to compete for jobs. Advocates claim that the promise of a more level playing field is especially important for minorities, who often have a higher rate of criminal convictions. The U.S. Equal Employment Opportunity Commission has similarly noted that criminal record exclusions tend to have a disparate impact based on race and national origin, and therefore caution that, in making employment decisions, employers should consider only those

convictions with a direct relationship to job duties and

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responsibilities. Further, employers are advised to consider such factors as the length of time since the offense, the gravity of the conduct, and the nature of the job sought before using a criminal record against an applicant or employee.

Based on the recent trend towards "banning the box," Utah employers may want to stay ahead of this trend by waiting until later in the application process to inquire about an applicant's criminal history-and should avoid doing so completely if there is no job-related reason for the inquiry. Further, in light of the Equal Employment Opportunity Commission's stance on conviction records, employers should avoid blanket exclusions that automatically disqualify individuals with criminal records from holding certain jobs.

Finally, a related consideration: due to requirements of the Fair Credit Reporting Act, before rejecting an applicant based on information from a background check, employers must give the applicant a notice that includes the report that it relied on to make its decision as well as a copy of "A Summary of Your Rights under the Fair Credit Reporting Act." If, after giving the applicant an opportunity to explain any negative information from the report, the employer still decides not to hire the employee, the employer must also: (1) inform the employee that he or she was rejected because of the information contained in the report; (2) provide the name, address, and telephone number of the company that provided the report; (3) state that the company who sold the report did not make the hiring decision and cannot give specific reasons for the rejection; and (4) inform the applicant that he or she has the right to dispute the accuracy or completeness of the report and to obtain an additional free report within 60 days.

**If you have any employment-related questions, please contact a member of our firm's Labor and Employment Section.**

**The Employment Law Update features selected developments in the law. It should not be relied upon for substantive employment law advice. Contact your attorney to resolve any legal questions.**