

Local Jurisdictions are Beating the Drum to “Ban the Box”

On January 1, 2015 and January 3, 2015, respectively, Montgomery County and Prince George's County became the second and third jurisdictions in Maryland (in addition to Baltimore City) to have laws restricting when and how a private employer can inquire about, and use, information related to a job applicant's criminal history. Containing very similar substantive provisions, both of the new laws do far more than simply prohibit an employer from including questions about an applicant's criminal records on an initial job application (i.e. banning the box). Instead, they place clear restrictions on when during the hiring process employers may investigate or inquire into an applicant's criminal history.

Montgomery County

The new Montgomery County law, which was enacted by the Montgomery County Council on October 28, 2014, and which went into effect on January 1, 2015, applies to all employers that employ fifteen or more full-time employees in Montgomery County.

Under the Montgomery County law, an employer may not require an applicant to disclose the existence or details about an applicant's criminal record on an initial job application. Additionally, the law further restricts employers from inquiring about or investigating an applicant's criminal background until the conclusion of the applicant's first interview. As specified in the County Code, an "interview" means "any direct contact by the employer with the applicant whether in person or by telephone or internet communications to discuss: (1) the employment being sought; or (2) the applicant's qualifications[,] but does not include "(1) written correspondence or email; or (2) direct contact made for the purpose of scheduling a discussion." As an exception to this rule, employers may inquire about criminal history before the end of the initial interview if it is voluntarily disclosed by the applicant. After an employer has learned of an applicant's arrest or conviction record, the new law requires that, before making an employment decision based on an applicant's criminal record, the employer engage in an individualized assessment, much like that recommended in the EEOC's 2012 Enforcement Guidance on Consideration of Arrest and Conviction Records in Employment Decisions. For further discussion of the EEOC's position on background checks see "EEOC Loses A Fourth Circuit Case on Background Checks" published herein. The purpose of this assessment is to consider whether the offense demonstrates a lack of fitness for the position applied for.

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