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“BAN THE BOX” LEGISLATIVE EFFORTS GATHERING STEAM AROUND THE COUNTRY

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With Gov. Chris Christie's approval of the Opportunity to Compete Act on August 11, New Jersey will soon join the growing number of states and municipalities that have enacted “ban the box” legislation designed to promote employment opportunities for ex-offenders. The 2007–2009 recession led to high unemployment rates around the country, particularly for individuals previously convicted of criminal offenses (who today make up almost one in four Americans by some estimates). The crippled job market, coupled with the notion that long-term unemployment causes higher recidivism rates, sparked the recent ban the box movement.

Although ban the box laws vary from jurisdiction to jurisdiction, they are based on a common principle—that forcing an employer to consider an ex-offender's professional qualifications before his or her criminal history will reduce the number of jobless ex-offenders. The term “ban the box” refers to the box candidates must often mark on written applications, notifying employers if they have ever been convicted of a crime. Typical ban the box regulations prohibit employers from asking about criminal histories not only on initial written applications, but also during the early stages of the application process, often not until the employer has offered the applicant an interview.

In 1998, Hawaii became the first state to pass a ban the box law. Today, 10 states prohibit most public employers from seeking information regarding criminal backgrounds on their initial applications. Hawaii, Massachusetts, Minnesota, and Rhode Island's ban the box legislation extends to private employers. Governing bodies in more than 50 U.S. cities and counties have passed similar regulations on government hiring and, in some cases, private employment. For instance, in 2011, Philadelphia became the first city to enact ban the box legislation for both public and private employers. Newark, New Jersey, has some of the strictest regulations in the country, prohibiting employers from inquiring about a candidate's criminal background until a conditional offer of employment is made.

Different exceptions to ban the box rules exist in each jurisdiction. For example, most jurisdictions allow employers to make up-front criminal background inquiries when hiring for sensitive positions involving law enforcement or interaction with potentially vulnerable populations such as children or the elderly. In other areas, ban the box regulations apply only to employers with a certain number of employees or employers that employ a

certain number of individuals within that jurisdiction.

With the current patchwork of ban the box rules in states, counties and cities across the United States, some employers have ceased making inquiries about criminal backgrounds early in the application process. In 2013, Target Corp. removed questions regarding criminal history from all of its written applications. With this in mind, employers, particularly those with multiple offices or locations, must ensure that their hiring policies keep pace with the ever-changing (and ever-growing) landscape of ban the box legislation.

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