

Happy New Year: Minnesota's "Ban The Box" Law Now In Effect

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As of January 1, 2014, Minnesota employers are required to comply with "Ban-the-Box" legislation that Governor Mark Dayton signed into law last year. The law prohibits many employers from asking job applicants about criminal backgrounds prior to selection for an interview, or until after making a conditional job offer. The law now applies to private employers, and aligns such pre-employment restrictions with those placed upon public employers in 2009.

"Ban-the-Box" refers to the criminal history question commonly including on most job applications that asks an applicant to check a box to indicate previous felony convictions. The legislative intent for the statute is to "encourage and contribute to the rehabilitation of criminal offenders and to assist them in the resumption of the responsibilities of citizenship" and to provide former felons with increased chances of securing employment.

For as many applicants "Ban-the-Box" might assist, the statute provides a substantial number of exemptions and protections for employers. Employers

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who have a statutory duty to inquire into applicants' criminal histories (such as the Minnesota Department of Corrections) are exempted from the new law's restrictions. Also exempted from the Ban-the-Box law are licensing processes for law enforcement officers, fire protection agencies, private detectives, and infractions for various driving licenses (school bus, emergency medical services, special transportation, commercial drivers, taxicab drivers). Additionally, the statute allows criminal inquiries for school teachers, physicians, chiropractors, lawyers, and those employed by the State judicial branch.

The statute also provides employees with immunity from civil liability against claims of negligent hiring of persons with criminal histories. Enactment of the Ban-the-Box law was accompanied by an amendment to Minnesota's personnel statute that now prohibits the introduction of criminal history information in a civil action against a private employer, if:

- (1) the duties of the position of employment did not create additional risk to the public;
- (2) criminal history records were sealed or the former employee received a pardon;
- (3) the record is of an arrest or charge that did not result in a criminal conviction; or
- (4) the civil action is based solely upon an alleged failure to comply with the Ban-the-Box law.

The Ban-the-Box law contains a unique two-phase penalty scheme for employer violations. Until December 31, 2014, employers will be given a written warning for the first infraction, and may be fined up to \$500 for subsequent violations. As of January 1, 2015, a new set of penalties goes into effect: small employers (10 or fewer employees) can be fined \$100 per violation, with a maximum of \$100 in penalties per month; these penalties increase to \$500 per violation/month for employers with 11-20 employees; employers with more than 20 employees may be fined \$500 per violation, up to \$2,000 per month. These remedies are exclusive, and the law makes clear that employers are not otherwise liable for Ban-the-Box violations.

The Minnesota Department of Human Rights has the authority to investigate complaints of non-compliance with the "Ban-the-Box" law. Such investigations can often be disruptive and lead to additional legal liability in other areas. Minnesota employers should consult with legal counsel about revising employment applications, applicability of the new law, and to assess possible exemptions.