

## 2018 June Newsletter

### What is “Ban the Box”?

You may hear that various states, counties and cities are passing laws on “Ban the Box” and wonder what it means. As part of conducting a background check on an applicant, many employers will ask applicants about their criminal background on the employment application. “Ban the Box” requires employers to eliminate the question from employment applications until the interview process or a conditional offer of employment is made to the applicant. Other than Austin, which requires employers with 15 or more employees to ask criminal history questions or conduct criminal background check after a conditional offer has been made, Texas currently does not have any “Ban the Box” guidelines. However, you should still be aware of the EEOC guidelines when asking criminal history questions or conducting a criminal background check.

General EEOC Guidelines include:

- Be consistent and ask all applicants about criminal history at the same point in the interview process, whether it be during the interview stage or after a conditional offer has been made to the applicant. Note: in certain industries, you may need to request criminal history earlier in the hiring process to comply with certain laws or regulations.
- Treat applicants the same and ensure your employment policy is not excluding applicants of a certain race or national origin.
- Determine how the applicant's criminal history relates to the risks and responsibilities of the job. Consider:
  - The nature and gravity of the offense or offenses
  - Time passed since the conviction or completion of sentence
  - Nature of the job held or sought
- Arrest records are different than conviction records. An arrest does not establish that criminal conduct has occurred. However, an employer may make an employment decision based on the conduct underlying the arrest if the conduct makes the applicant unfit for the position.
- Give applicants an opportunity to explain their criminal history. Inform the applicant they may be excluded from consideration because of prior criminal conduct. Provide the applicant with an opportunity to respond and consider reevaluating them based on their explanation.

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A decision matrix is helpful in documenting decisions regarding your hiring decision. Items to include are;

- Identifying the essential elements of the position and circumstances under which the jobs are performed
- Determining specific criminal offenses that may determine unfitness
- Reviewing the duration of time passed since the offense
- Documenting justification for the employment decision

For detailed information, go to:

[EEOC Guidance Criminal Records for Background Screen](#)

Note: It is recommended that you use a background screening company to check the applicant's information, especially criminal. The state database may not be as up-to-date, will not include other state information and may not allow you to use the information to disqualify an applicant.

### ***And for the dog days of summer, “Take your dog to work day” is June 22!***

On the fourth Friday in June, workplaces across America will be accommodating an unusual kind of visitor: The canine kind. June 22nd is Take Your Dog to Work Day, which is designed not just for seeing-eye dogs, but for any dog—from the yappy terrier to the gargantuan Great Dane.

***A dog will teach you unconditional love. If you can have that in your life, things won't be too bad.”***

***—Robert Wagner (actor, [The Longest Day](#))***

**For help with any of the above items or any human resource and benefit needs, a free one-hour consultation is available. For more information, contact [info@humanresourcesolutionsllc.com](mailto:info@humanresourcesolutionsllc.com)**

*This newsletter is intended to provide general guidance about recent topics in Human Resources. It is not a legal opinion.*

Source: EEOC