

Arlington County bans the box

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In November 2014, Arlington County joined six other Virginia jurisdictions in outlawing questions about felony convictions on employment applications. While some oppose "ban-the-box" legislation, proponents believe it will significantly improve the employment prospects of the estimated 65 million Americans who have criminal records.

What is ban the box?

Ban-the-box policies eliminate questions about applicants' criminal records on employment applications and delay such inquiries until a later point in the interview process. Ban-the-box provisions have been adopted by 12 states. Hawaii was the first state to adopt such a policy in 1998. Since then, a number of states and cities in states without a statewide policy have followed suit. The most recent are Washington, D.C., and New Jersey, whose policies will take effect in 2015.

Ban the box in Virginia

Virginia does not have a statewide ban. On November 3, 2014, Arlington County joined Alexandria, Newport News, Norfolk, Petersburg, Portsmouth, and Richmond in postponing criminal background inquiries until later in the interview process. Specifically, initial Arlington County employment applications may no longer ask applicants to list previous criminal convictions. Also, the county is eliminating questions regarding DWI and DUI convictions on initial applications unless the position includes driving as part of the job. Candidates may still be questioned about their criminal history and may be asked to certify that they have not had any convictions in the last three years.

Ban the box, however, allows criminal record questions during the later stages of the interview process. That provides job candidates an opportunity to explain the

circumstances of a conviction and why the conviction should not disqualify them from consideration.

Pros and cons

Proponents of Arlington County's ban-the-box law believe the measure will provide employment opportunities that have never been available to candidates with criminal convictions. Marcy Foster, director of the Arlington County Human Resources Department, believes that the law "reinforces [the county's] commitment to fair hiring practices." Other proponents believe the ban-the-box policy will decrease race discrimination because minorities tend to have higher conviction rates. Finally, proponents believe that ban-the-box policies further the public interest of helping ex-offenders secure employment.

Meanwhile, opponents point to potential employer liability under various legal theories such as negligent retention, negligent hiring, and negligent supervision to argue that applicants' criminal histories are a significant factor in hiring.

Bottom line

Although Virginia does not have a statewide ban-the-box policy, many localities in the Commonwealth have adopted such policies, and more localities may do so in the future. Therefore, check to see whether the local jurisdictions in which you operate have adopted ban-the-box policies, and, if so, ensure that your hiring practices are in full compliance with the law. If you have questions about whether you are covered by a ban-the-box law or whether your hiring practices comply with all relevant laws, contact employment counsel.

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