

Banning the Box: What's the effect on CRAs?

Many of the employment applications used by employers have a section where the applicant is asked about criminal activity. There is an increasing trend for cities and states to prohibit this practice, known in the industry as “Ban the Box,” the “box” being the area where applicants check yes or no to the criminal activity question.

NELP, the National Employment Law Project, issued a briefing paper in November of 2013 titled “Statewide Ban the Box. Reducing unfair Barriers to employment of people with criminal Records.”

In their report they state that nationwide, “over 50 cities and counties—including New York City—have now taken the critical step of removing unfair barriers to employment in their hiring policies. Widely known as “ban the box,” these initiatives typically remove the question on the job application about an individual’s conviction history and delay the background check inquiry until later in the hiring process.”

Many employers would dispute that “unfair barrier” label. They would prefer to assemble all their candidates and all their candidates’ qualifications and history and then make a decision, arguing that if they decide on one person before all the information is known, they may have to go back and go through the screening process again on another candidate. They would argue that it makes no sense to spend time and dollars on, say, a driver applicant who has a recent felony DWI—they would like to know about that conviction up front, so they can save their time and money and focus their resources on a qualified candidate.

While many employers may not like “ban the box,” the trend is against them. Aside from the 50 cities and counties, the NELP reported that “today there are a total of ten states representing nearly every region of the country that have adopted ban-the-box policies—California (2013, 2010), Colorado (2012), Connecticut (2010), Hawaii (1998), Illinois (2013), Maryland (2013), Massachusetts (2010), Minnesota (2013, 2009), New Mexico (2010), and Rhode Island (2013). Of these ten states, four states—Hawaii, Massachusetts, Minnesota, and Rhode Island—have banned the box for private employers, which many advocates embrace as the next step in the evolution of these policies. Federally, the U.S. Equal Employment Opportunity Commission (EEOC) last year endorsed ban-the-box as a best practice in its guidance for employment decisions considering arrests and convictions.”

The fact that four states have banned the box for private employers is significant. It’s one thing for government agencies to initiate and follow an internal practice. It’s a different thing for a new law to pass that dictates when private employers may inquire into criminal history.

As an example, Minnesota Senate Bill .523 was signed in May 2013, by Governor Mark Dayton (D). This amendment changed the existing 2009 law to cover not only public-sector hiring, but also private-sector hiring, prohibiting private employers from inquiring into an applicant’s criminal history until after they have been selected for an interview or, before a conditional offer of employment has been extended.

From the new federal guidance from the EEOC on the use of criminal records and their aggressive enforcement actions, to state and local prohibitions on the asking about criminal record history early in the hiring process, employer criminal record compliance is becoming more important.

What is the effect on CRAs?

Regarding “Ban the Box”: I don’t mean to be crass—but I’ll ask a question and invite your thoughts. Is ban the box good or bad for CRAs from the standpoint of business volume? At first blush, it seems that any screen that is pushed further to the end of the process, when presumably there are fewer qualified applicants, would reduce a CRA’s business.

On the other hand, I have read an article from the owner of a CRA that states “The HR guy in me hates this trend [ban the box] and recognizes that it will waste employers’ and applicants’ time and effort. The owner of a background screening company in me recognizes that this trend means more background checks from our customers.”

Whether ban the box increases or decreases a CRA’s business may depend on several varying factors that differ from employer to employer. A couple of these factors could be the prevalence of criminal activity in the employer’s pool of applicants and, the nature of the position/hiring standard for which the applicants are applying. But, if you have any thoughts, or experience in this area, I would like to hear it. Email me at Derekh@crazoom.com and I’ll address the subject in the future or provide you the information I receive.

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