



Fact Sheet on “Ban the Box”:
The New Philadelphia Law on Using Criminal Records in Hiring

What Does the Law Say?

The law tells employers when they are allowed to use information from a criminal record:

- **Arrests:** Employers that are covered by the law cannot ask about, or require you to report, an arrest or criminal charge if it did not result in a conviction and the case is not still open in court. Employers also cannot refuse to hire you, or fire you from a job, on the basis of an arrest if it did not result in conviction and the case is closed.

- **Convictions:** Employers that are covered by the law cannot ask you about, or require you to disclose, any criminal convictions on an initial job application form, or anytime before the end of the first job interview. Employers also cannot do their own, independent criminal background check on you until after you have had a first interview.

Can Employers Consider My Convictions?

Yes, employers can still take your convictions into account when they decide whether to hire you or not. The purpose of Ban the Box is to give you a chance to have an interview before the employer sees your criminal record; after you have an interview, the employer can then ask you to explain your record, and the employer can do a criminal background check on you.

Employers can only turn you away for a conviction if that conviction has some relationship to the job you are applying for. If the conviction was too minor, or too old, or for some crime that has no connection to the work that you would be doing, then the employer cannot use that conviction to deny you the job.

What Do I Have to Tell Employers About My Record?

Employers can still fire you, or refuse to hire you, if you are not honest when they ask you about your record. If the employer is covered by the new Philadelphia law, then they have no right to ask you about your record before the end of your first interview - but after that interview, they do have the right to ask you, and you have an obligation to be honest. (See below for explanation of who is covered by the law.)

Remember, employers who are covered by the new law are never allowed to ask you about an arrest if that case is closed and it did not result in a conviction. They are only allowed to ask you about open cases, or convictions on your record.



Which Employers Are Covered By the Law?

Almost all employers that have ten or more employees who work in Philadelphia are covered by the new law for their Philadelphia employees. This includes job placement and referral agencies and other employment agencies are also covered - they also have to comply with the law.

The only employers that are not covered by the new law are state and federal agencies, public agencies that are part of the criminal justice system, and any company which has less than ten workers in Philadelphia.

What If An Employer Doesn't Do Its Own Hiring Or Job Interviews?

If the employer does not conduct job interviews, it cannot do a criminal background check at all, and it cannot make the job applicant answer questions about his or her criminal record. If an employer uses an agency for screening and/or hiring, then the agency is covered by the law, and the agency can make an inquiry about convictions after it receives an application and conducts a first interview. Employers that do not do their own interviews cannot, however, gather any information from the referral agency about the criminal records of people referred for employment.

When Can the Employer Do a Criminal Background Check on Me?

Employers can conduct a full background check on an applicant's convictions as soon as they have accepted an application form and completed a first interview.

What Counts As An Interview?

The first job interview is the first time that the employer has a significant direct discussion with you, either in person or over the phone, about the job you are seeking and whether you are suitable for the job.

What Counts As a Violation of the Ban-the-Box Law?

An employer that is covered by law commits a violation if they do any of the following:

- Require you to tell them - either on an application form or out loud - about your convictions or any charges that are still pending, before you have filed an application and you have had a first interview with them
- Run a criminal background check on you before you have filed an application and you have had a first interview with them
- Require you to tell them about your arrests that did not result in a conviction - either on an application form or out loud - at any time
- Taking an adverse action against you (such as refusing to hire you, or firing you) based on charges that did not result in a conviction and that are not still open or unresolved.

How Do I File A Complaint Against An Employer Who Violated the New Law?

You file a Ban the Box Complaint Form with the Philadelphia Commission on Human Relations. You can find a copy of the complaint form here, or you can go to the Commission's



website at <http://www.phila.gov/humanrelations/> . If you have a copy of the application form that included a questions about your record, you should attach a copy to the complaint form. If you applied online, you should list the website where you applied in your answer to Question 8 on the complaint form.

You can mail the complaint form to: Philadelphia Commission on Human Relations, the Curtis Center, 601 Walnut Street, Suite 300 South, Philadelphia, PA 19106. You can also fax it to the Commission at (215) 686-4684.

What Happens When I File A Complaint?

When you file a complaint, the Commission will do an investigation. If you give the Commission a copy or a link to the application form, then you will not need to participate any further. If you are complaining about a question you were asked, or about a background check that was done too soon, or about an adverse action based on an arrest which did not result in a conviction, then the Commission will ask you to participate in the investigation to explain what happened to you; you may be asked to go to a hearing and testify.

What Penalties Will Be Applied for Violations?

The Philadelphia Commission on Human Relations, which will administer and enforce the law, can impose fines on employers who break the law. The PCHR also has the discretion to file charges of discrimination against violators - particularly against repeat offenders.

What Obligations Do Employers Have to Job Applicants With Criminal Records?

Under federal, state, and local law, employers must: consider all applicants fairly in accordance with EEOC guidelines (described above); accept an application and conduct an initial interview prior to inquiring into an applicant's convictions; provide written notice to an applicant if s/he is rejected due to a criminal record; take adverse actions only in response to misdemeanor or felony convictions; and comply with Fair Credit Reporting Act requirements when a credit report or third party background check report is solicited - including five days' advance notice of intent to take adverse action based on the report. These rules apply equally to job referral and placement agencies.

January 26, 2012