

Publications

Labor and Employment Alert: Maryland Bans the Box

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Over Governor Larry Hogan's veto, the Maryland General Assembly recently enacted legislation to prohibit employers from initially seeking job applicants' criminal records. Maryland now joins 13 states and the District of Columbia that mandate removing criminal history questions from job applications for private employers. These states are California, Colorado, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington. At least 18 cities and counties across the country have also extended these requirements to private employers.

Effective January 1, 2020, Maryland employers may not, at any time before the first in-person interview, require an applicant to disclose whether he or she has a "criminal record" or has been the subject of criminal accusations. An employer may require the applicant to disclose that information during the first in-person interview. An employer is prohibited from retaliating or discriminating against an applicant or employee who complains of a violation of the law. "Criminal record" is broadly defined to include an arrest, a plea or verdict of guilt, a plea of no contest, marking a charge "stet" on the docket, a disposition of probation before judgment, or a disposition of not criminally responsible.

The law only applies to employers of 15 or more full-time employees, which includes contractual, temporary, seasonal, and contingent workers. Further, the law does not prohibit an employer from inquiring into an applicant's criminal record or taking action the employer is required or authorized to take in accordance with federal or state law. The law also does not apply to employers that provide programs, services, or direct care to minors or vulnerable adults.

The State Labor Commissioner is responsible for investigating violations of this law. If the Commissioner determines an employer has violated the law, the Commissioner may assess a civil penalty of up to \$300 for each aggrieved applicant or employee. The Commissioner must consider the gravity of the violations, the size of the employer's business, the employer's good faith, and the employer's history similar violations in assessing the amount of the penalty.

The law does not preempt local jurisdictions from enacting their own, more stringent ban-the-box laws. Such laws currently exist in Baltimore, Montgomery County, and Prince George's County.

Employers operating in Maryland should review their policies and practices to ensure they comport with the law's requirements. Contact your Vorys lawyer if you have questions about pre-employment inquiries.