

## New York City Mayor Expected to Enact Ban-the-Box Legislation

By: George C. Morrison  
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Earlier this month, the New York City Council passed the Fair Chance Act (FCA), an ordinance restricting when employer inquiries about applicants' criminal histories may be made during the application process and imposing significant duties on employers that intend to take action based on criminal histories. The FCA will become effective 120 days after receiving Mayor Bill de Blasio's signature, which is expected to occur in the coming weeks.

Like other "ban-the-box" laws, the FCA generally prohibits an employer with at least four (4) employees from making an inquiry about an applicant's pending arrest or criminal conviction record until after a conditional offer of employment has been extended. Employers who make inquiries into an applicant's criminal history after a conditional offer of employment has been extended, and subsequently determine that the information warrants an adverse employment action, must follow a multi-step process. Specifically, employers must:

- Provide a written copy of the background inquiry to the applicant (the manner to be determined by the New York City Commission on Human Rights),
- Perform an analysis of Article 23-A of the New York Correction Law (employers may consider felony conviction record information only if the employer establishes: (1) a direct relationship between the previous criminal offenses and the specific employment sought or (2) that the granting of employment would involve an unreasonable risk to property or the safety or welfare of specific individuals or the general public), including documentation of such analysis and the reasons for any employment decision, which must be provided to the applicant, and,
- Allow the applicant at least three business days to respond to the decision, while holding the position open for the applicant.

Notably, the FCA is incorporated under the New York City Human Rights Law, which provides that employers who violate these requirements may be liable for compensatory damages (including back pay, front pay, and emotional distress), uncapped punitive damages, and attorneys' fees.

If Mayor de Blasio enacts the FCA, New York City employers should proactively review their job application forms and procedures to ensure that inquiries to job applicants' criminal arrests and convictions do not occur prior to hire. Further, employers should prepare policies and procedures to address the FCA's specific requirements to rescind a job offer on the basis of a criminal conviction.

If you have any questions about the FCA, need assistance with updating your hiring policies and procedures, or have any other employment related questions or concerns, please contact George Morrison (646.837.5776; [morrison@whiteandwilliams.com](mailto:morrisong@whiteandwilliams.com)), another member of our Labor and Employment Practice Group, or any member of the Firm whom you regularly contact.

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