

Client Alert

The Fair Chance Act: Ban the Box Legislation Coming to New York City Soon

June 12, 2015 – As follow-up to our August 20, 2014 Client Alert (available [here](#)) concerning an employer's use of criminal background checks, the New York City Council recently passed its own version of "ban the box" legislation that will prohibit private sector employers from inquiring into an applicant's criminal history during the initial stages of the job application process. The Fair Chance Act, which passed by a vote of 45-5 in the New York City Council, is expected to be signed into law by Mayor de Blasio in the coming weeks. Advocates for the "ban the box" movement believe that this type of provision helps to ensure that employers will consider applicants based on their skills, experience and qualifications before becoming unfairly prejudiced by a prior criminal history that may be entirely unrelated to their ability to perform the job in question.

The Fair Chance Act will permit an employer in New York City to inquire about prior arrests or convictions only after a conditional offer of employment has been made to the job applicant. If an employer chooses to withdraw the offer of employment after learning of a prior arrest or conviction, it has the right to do so. However, the employer must provide the applicant with a copy of the background check, a written explanation of its decision not to hire the applicant, and then hold the position open for at least three days to allow the applicant time to respond to the determination not to hire him/her. The intended purpose of this three-day holding period is to give the applicant an opportunity to engage the prospective employer in discussions concerning the accuracy (or inaccuracy) of any criminal record, the employer's requirements for the position and evidence of the applicant's rehabilitation. If the offer is not reinstated after this three-day period, the applicant retains the right to bring a lawsuit in civil court or file a complaint with the New York City Commission on Human Rights, contesting the withdrawal of the job offer.

To be clear, the Fair Chance Act does not require employers to hire an applicant with a criminal record. Rather, the law delays the process of conducting a background check until after an applicant has had the opportunity to demonstrate his or her skills, experience and qualifications for the particular job. An employer will still be permitted to conduct criminal background checks and deny employment where the applicant's criminal record is directly related to the job

or otherwise poses an unreasonable risk to the employer, its workforce or its legitimate business operations.

If you require any additional information about your hiring or recruiting policies, or any other employment-related issue, please contact:

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