

Oregon to Become the Latest State to Ban the Box

BY JENNIFER MORA, JENNIFER WARBERG AND PHILIP GORDON ON JUNE 22, 2015

Update: On June 26, 2015, Governor Kate Brown signed House Bill 3025 into law.

On June 16, 2015, the Oregon House passed an amended version of House Bill 3025, which will prohibit most employers from asking questions about criminal history on job applications or at any other point in the hiring process before the initial interview. Approval of House Bill 3025 follows closely on the heels of similar legislation enacted in New York City, Illinois, Montgomery and Prince George's Counties (MD), the District of Columbia and the City of Columbia, Missouri.¹ Oregon Governor Kate Brown is expected to sign the bill into law, which would become effective January 1, 2016.

States, cities and administrative agencies, including the federal Equal Employment Opportunity Commission (EEOC) continue to focus intently on employer use of criminal records. Thus, employers throughout the U.S., and particularly multi-state employers, should continue to monitor developments in this and related areas of the law, including laws restricting the use of credit history information² and the fair credit reporting laws.³ Most immediately, Oregon employers should assess whether they are covered by the law, and if so, whether they need to revise their job applications and guidelines and documentation for the hiring process.

Coverage and Exemptions

House Bill 3025 does not state which "employers" are covered and, thus, all Oregon employers should assume they are covered unless they fit within one of the new law's enumerated exemptions, including:

- law enforcement agencies;
- employers in the criminal justice system (not defined in the new law);
- employers seeking nonemployee volunteers; and
- other employers who are required by federal, state or local law to consider an applicant's criminal history.

Unlawful Practices

The law will make it an unlawful practice for an employer to exclude an applicant from an initial interview solely because of a past criminal conviction. Thus, an employer may not require an applicant to:

- disclose on an employment application a criminal conviction;
- disclose, prior to an initial interview, a criminal conviction; or
- if no interview is conducted, disclose, prior to making a conditional offer of employment, a criminal conviction.

In other words, covered Oregon employers will be barred from requiring job applicants to disclose criminal convictions prior to an initial interview or, if there is no interview, prior to a conditional offer of employment. The statute does not specify whether it applies to the process of engaging independent contractors

The legislation affirmatively states that it does not foreclose an employer from considering convictions when making hiring decisions.

Enforcement

The law will not provide an aggrieved applicant with a private right of action against any covered employer. Rather, the applicant may file an administrative complaint with the Bureau of Labor and Industries. If the Bureau finds substantial evidence that an employer has violated the new law, the Bureau may attempt to settle the matter or conduct an administrative hearing where monetary damages may be awarded to the aggrieved applicant. If the Bureau files its own complaint on behalf of the aggrieved applicant and an unlawful practice is found, the Bureau may impose civil penalties of up to \$1,000 per violation.

Recommendations

Oregon employers, and multi-state employers with employees in Oregon, should assess whether they are covered by the legislation, and, if so, whether they need to do the following:

- Revise job applications, interviewing guidelines and policies and procedures for background checks;
- Revamp the sequencing and timing of events in the hiring process;
- Implement guidelines and documentation that comply with the new law; and

Pay close attention to this evolving area of law, including in Portland, Oregon where Mayor Charlie Hales, earlier this year, pushed for a “ban-the-box” ordinance.

¹ See Jennifer Mora, David Warner, and Rod Fliegel, [New York City Council Bans the Box](http://www.littler.com/publication-press/publication/new-york-city-council-bans-box) (<http://www.littler.com/publication-press/publication/new-york-city-council-bans-box>), Littler Insight (Jun. 12, 2015); Philip Gordon and Zoe Argento, [Ringing in the Year with Four Ban-the-Box Laws](http://www.littler.com/publication-press/publication/ringing-new-year-four-ban-the-box-laws) (<http://www.littler.com/publication-press/publication/ringing-new-year-four-ban-the-box-laws>), Littler ASAP (Jan. 26, 2015); Rod Fliegel, Jennifer Mora, Joseph Harkins and Melanie Augustin, [Private Sector Employers in the District of Columbia Will Soon Be Required to Comply with a New Law Restricting Their Ability to Rely on Criminal Records for Employment Purposes](http://www.littler.com/private-sector-employers-district-columbia-will-soon-be-required-comply-new-law-restricting-their) (<http://www.littler.com/private-sector-employers-district-columbia-will-soon-be-required-comply-new-law-restricting-their>), Littler Insight (Aug. 22, 2014); Jennifer Mora and Philip Gordon, [Columbia, Missouri Joins the Ranks of Ban-the-Box Jurisdictions](http://www.littler.com/publication-press/publication/columbia-missouri-joins-ranks-ban-the-box-jurisdictions) (<http://www.littler.com/publication-press/publication/columbia-missouri-joins-ranks-ban-the-box-jurisdictions>), Littler ASAP (Dec. 15, 2014).

² See Jennifer Mora, David Warner and Rod Fliegel, [New York City Council Passes the First Citywide Bill Restricting Employers from Using Credit Information in Employment Decisions](http://www.littler.com/new-york-city-council-passes-first-citywide-bill-restricting-employers-using-credit-information) (<http://www.littler.com/new-york-city-council-passes-first-citywide-bill-restricting-employers-using-credit-information>), Littler Insight (Apr. 21, 2015); [Colorado is the Latest and Ninth State to Enact Legislation Restricting the Use of Credit Reports for Employment Purposes](http://www.littler.com/colorado-latest-and-ninth-state-enact-legislation-restricting-use-credit-reports-employment-purposes) (<http://www.littler.com/colorado-latest-and-ninth-state-enact-legislation-restricting-use-credit-reports-employment-purposes>), Littler Insight (Apr. 26, 2013).

³ See Rod Fliegel and Jennifer Mora, [Weathering the Sea Change in Fair Credit Reporting Act Litigation in 2014](http://www.littler.com/publication-press/publication/weathering-sea-change-fair-credit-reporting-act-litigation-2014) (<http://www.littler.com/publication-press/publication/weathering-sea-change-fair-credit-reporting-act-litigation-2014>), Littler ASAP (Jan. 6, 2014); Rod Fliegel, Jennifer Mora and William Simmons, [The Swelling Tide of Fair Credit Reporting Act \(FCRA\) Class Actions: Practical Risk-Mitigating Measures for Employers](http://www.littler.com/publication-press/publication/swelling-tide-fair-credit-reporting-act-fcra-class-actions-practical-r) (<http://www.littler.com/publication-press/publication/swelling-tide-fair-credit-reporting-act-fcra-class-actions-practical-r>), Littler Report (Aug. 1, 2014).

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