



## **District of Columbia joins others to “Ban the Box”**

The District of Columbia has joined other jurisdictions, such as [San Francisco](#) and [Rhode Island](#), by passing the “[Fair Criminal Record Screening Amendment Act of 2014](#).” The new law amends the “Re-entry Facilitation Amendment Act of 2012.”

### **Who does this affect?**

The law applies to both private and public sector employers in DC employing more than 10 individuals, or any individual acting directly or indirectly in the interest of the employer.

### **When does this go into effect?**

Mayor Vincent C. Gray returned the signed Act on August 22, 2014. The law will take effect following a 30-day period of Congressional review, as provided in the District of Columbia Home Rule Act, and publication in the DC Register.

### **What is included in the law?**

The legislation states:

- An employer may not make an inquiry about, or require an applicant to disclose or reveal, a criminal conviction until after making a conditional offer of employment.
- Following a conditional offer of employment, an employer may only withdraw the conditional offer or take an adverse action against an applicant for a “legitimate business reason.”
- If an applicant believes a conditional offer was terminated or adverse action taken based on a criminal conviction, the applicant may request (within 30 days of the action) the employer provide (within 30 days of request receipt) a copy of any and all records procured by the employer in consideration of the applicant and a notice that advises the applicant of the opportunity to file an administrative complaint with the Office of Human Rights. The employer could face penalties between \$1,000 and \$5,000 if found in violation of the law.

### **Are there any exceptions?**

Yes. The prohibitions of this act shall not apply where a law or regulation requires the consideration of an applicant’s criminal history, to a position designated as part of a government program or obligation designed to employ those with criminal histories, or to any facility or employer providing programs, services, or direct care to minors or vulnerable adults.

### **Can employers still request an applicant’s criminal history?**

Yes. Employers may inquire into an applicant’s criminal conviction history or pending offenses after a conditional offer.

### **Can employers still consider and take adverse action based on an applicant’s criminal history?**

Yes. If an employer wants to take adverse action based on the applicant’s conviction history, the employer must determine a “legitimate business reason” that is reasonable in light of the following factors:

- The specific duties and responsibilities necessarily related to the employment sought or held by the applicant;
- The bearing, if any, of the criminal offense for which the applicant was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities;
- The time which has elapsed since the occurrence of the criminal offense;
- The age of the applicant at the time of the occurrence of the criminal offense;
- The frequency and seriousness of the criminal offense; and
- Any information produced by the applicant, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense.

## **Recommendations**

You may want to review, and discuss with your legal counsel, your organization’s policies and procedures, including your company’s application, any criminal history questions, and pre-adverse and adverse action process to ensure compliance with the changing laws.

## **Contact Accurate Background**

For additional questions, please contact Accurate Background at 800.216.8024. For more information regarding recent Ban the Box initiatives in other states and jurisdictions, visit our [Legislative Updates page](#).

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