



## Philadelphia Builds Upon Existing “Bans the Box” Legislation

### THE BASICS

<i>Location</i>	Philadelphia, PA
<i>Legislation</i>	<b>Bill No. 150815</b>
<i>Type</i>	Ban the Box
<i>Effective</i>	<b>March 14, 2016</b> (90 days after it is signed into law)

### KEY TAKEAWAYS

- ✓ Affects any employer within the City of Philadelphia
- ✓ Employer must not consider criminal history before conditional offer
- ✓ Employer must conduct an individualized assessment, but cannot consider criminal convictions over 7 years from the date of inquiry
- ✓ If an offer is rescinded, employer must notify the applicant in writing of such decision and its basis, allowing 10 business days for response
- ✓ Employers must post a summary of the requirements as provided by the Commission in a conspicuous place on their website and premises

Philadelphia’s City Council passed, and Mayor Nutter signed, an amendment to their existing ban the box legislation that goes much further than the City’s 2011 legislation. **Bill No. 150815** amends Chapter 9-3500 of the Philadelphia Code (“Fair Criminal Records Screening Standards”) and will take effect on **March 14, 2016**.

### What areas of the new law may differ from the current law?

Changes in the law include, but are not limited to:

- ✓ How many employees qualify as a private employer;
- ✓ Deferring any criminal inquiries until after a conditional offer has been extended;
- ✓ Requiring that no employer shall maintain a policy of automatically excluding any applicant with a criminal conviction from a job;
- ✓ Requiring that a city agency or private employer may consider, for employment purposes, a prospective employee’s conviction record only to the extent that the conviction occurred fewer than seven (7) years from the date of the inquiry;
- ✓ Establishing individualized assessment criteria and processes (as outlined below);
- ✓ Implementing adverse action procedures (as outlined below);
- ✓ Posting requirements for an employer’ website and premises.

### Which employers are affected?

The law applies to City agencies or private employer which employs any persons within the City of Philadelphia. Private employment will also include, but is not limited to, job placement and referral agencies, temporary agencies, contractors, vocational or educational training, and other employment agencies. It is important for all impacted employers to read this Ordinance and discuss with their legal counsel how it impacts their organization.

### What does the law prohibit?

The law prohibits, in connection with the licensing or employment of any person, a City agency or private employer from making any inquiry regarding or to require any person to disclose or reveal any criminal convictions during the application process. The inclusion of such inquiry is unlawful even if certain applicants are told not to answer, and any inquiry regarding the applicant’s willingness to submit to a background check is also prohibited. The application process begins when the applicant inquires about the employment being sought and ends when the employer has extended a conditional offer of employment to the applicant.

### Are there any exceptions?

Yes, these prohibitions shall not apply if the inquiries or adverse actions are specifically authorized or mandated by any other applicable law or regulation, including law enforcement agencies or domestic services in or about the private home in which the employer resides. Additionally, if an applicant voluntarily discloses information regarding their criminal convictions during the application process, the employer may discuss the criminal conviction disclosed by the applicant at that time. An employer may also give notice of its intent to conduct a criminal background check to prospective applicants or during the application process, provided they comply with the applicable regulations.



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

Yes, however no employer shall automatically exclude any applicant with a criminal conviction, unless the offense bears such relationship to the employment sought that the employer may reasonably conclude that the applicant would present an unacceptable risk to the operation of the business or to co-workers or customers, and that exclusion of the applicant is compelled by business necessity. To determine this, the employer must conduct an individualized assessment, including:

- ✓ The nature of the offense;
- ✓ The time that has passed since the offense;
- ✓ The applicant’s employment history before and after the offense and any period of incarceration;
- ✓ The particular duties of the job being sought;
- ✓ Any character or employment references provided by the applicant; and
- ✓ Any evidence of the applicant’s rehabilitation since the conviction.

If, after following these requirements, an employer decides to reject an applicant based in whole or in part on criminal record information, the employer shall notify the applicant in writing of such decision and its basis, and provide the applicant with a copy of the criminal history report. The employer shall allow the applicant 10 business days to provide evidence of the inaccuracy of the information or an explanation.

**Are there any other special requirements for employers?**

Employers must post a summary of the Chapter requirements, in a form to be supplied by the Commission, in a conspicuous place on the employer’s website and premises, where applicants and employees will be most likely to notice and read it.

**Recommendations**

We recommend you review, and discuss with your legal counsel, your organization’s policies and procedures, including your company’s application, criminal history questions and adverse action process to ensure compliance with the changing laws.

**Contact Accurate Background**

For additional questions relating to this legislation, please email [resources@accuratebackground.com](mailto:resources@accuratebackground.com). For more information regarding recent Ban the Box initiatives in other states and jurisdictions, visit our [Legislative Updates](#) page.