

Employers Take Note – 2020 Defense Spending Bill Includes “Ban the Box” Law

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On December 20, 2019, President Trump signed into law a defense spending bill which included the Fair Chance to Compete for Jobs Act of 2019 (“Fair Chance Act”). Employers should take note that the law (1) prohibits the federal government from requesting criminal history information from applicants until they reach the conditional offer stage; and, for private employers, (2) prohibits federal contractors from requesting criminal history information from candidates for positions within the scope of federal contracts until the conditional offer stage.

These prohibitions, however, contain multiple exceptions, including exceptions for positions that relate to law enforcement and national security duties, positions requiring access to classified information, and positions that, by law, require a federal contractor or the federal government to obtain criminal history information before extending a conditional job offer.

The law further requires the Director of the Office of Personnel Management to promulgate regulations, consistent with existing federal law, that identify additional excluded job positions after giving “due consideration to positions that involve interaction with minors, access to sensitive information, or managing financial transactions.”

Penalties associated with violating the Fair Chance Act range from a written warning to contractors for an “initial violation” to suspension and civil penalties for agency employees who commit more than one violation. Specifically with respect to contractors, “subsequent” violations in the act may result in suspension of payment under the relevant contract for which the applicant was being considered until the contractor demonstrates compliance with the law.

The Fair Chance Act is yet another step -- this time at the federal level -- in “Ban the Box” legislation, an ever advancing nationwide movement that seeks to advance opportunities for job applicants with criminal records by eliminating any inquiry into the criminal history on initial job applications. As of December 2019, 35 states and more than 150 cities and counties have adopted Ban the Box laws.

With the above in mind, employers must recognize the rapidly changing landscape which surrounds criminal history inquiries during the pre-employment process and, in so doing, ensure that their pre-employment policies, including those which specifically relate to criminal history inquiries, remain up-to-date and otherwise compliant with all applicable rules, laws, and regulations.

For more information on the Fair Chance Act, contact a member of the firm's [Labor & Employment Practice Group](#).

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