



Ban the Box FAQ for Private Employers

Governor Dayton signed the criminal background check bill, which expanded Ban the Box to private employers on January 1, 2014. This requirement has been in effect for public employers in Minnesota since 2009.

Does the new Ban the Box law require an employer to hire someone with a criminal record?

No. The Ban the Box law imposes no requirements on an employer that it hire an individual with a criminal record. However, the law does require employers to wait until the applicant has been selected for an interview, or until a conditional job offer has been extended, before inquiring about the applicant's criminal history.

Does the Ban the Box law require employers to interview someone with a criminal record?

No. The new law does not compel employers to interview individuals who have a criminal record.

Does the Ban the Box law prevent employers from conducting a criminal background check before hiring an applicant?

No. Employers may still conduct a criminal background check on an applicant before hiring an applicant. The Ban the Box law merely moves the inquiry into criminal history from the initial point of contact with the applicant until after the point in time in which the employer has decided to interview or extend a conditional job offer.

Does the law apply to small businesses as well as large companies?

Yes. There is no minimum threshold. All Minnesota employers, large and small, are covered under the new law.

Does Ban the Box eliminate laws that require individuals with criminal backgrounds to be excluded from certain positions?

No. If an employer is prohibited under federal or state law from hiring an individual who has been previously convicted of a crime, the employer remains obligated to continue to follow federal or state law. If a background check is legally required before beginning work, Ban the Box does not change that legal requirement.

Are there private employers that are exempt from the new law?

Yes. The Ban the Box law provides that private employers are exempt under the new law if the employer is specifically directed to conduct a criminal history background check or the

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employer is specifically required to become aware of and consider the individual's criminal history during the hiring process.

Can a private employer that is exempt under the new law inform applicants that they may be disqualified from employment for having previously committed a crime?

Yes. Exempt private employers may have an application that states that applicants may be disqualified from employment. An employer can provide information on their application form that individuals who have a particular criminal history background will be disqualified from employment by the employer.

At what point in time during the interview process can an employer obtain criminal history information from an applicant?

The answer depends on whether the employer is going to interview candidates before determining who to hire for the open position.

If the employer does conduct interviews before an applicant under consideration is hired, the employer should initiate a criminal background check after it has decided to interview the candidate.

If the employer doesn't conduct interviews before hiring an applicant, the employer may initiate a criminal background check after it extends a conditional offer of employment to the applicant.

If my business is based in another state, am I subject to the requirements of Minnesota's Ban the Box law at my Minnesota plant location?

Yes. Ban the Box applies to the Minnesota operations of companies that operate in multiple states.

We are an employer with operations in several states that uses one electronic application; can we use our electronic application if we inform applicants residing in Minnesota that they don't have to answer criminal background history questions?

Yes. A multi-state employer doesn't need to abandon its practice of using one electronic application, provided that the electronic application provides language on the application that is clear and unambiguous that Minnesota law provides that applicants are not to answer criminal background history questions.

Can an employer be liable for discrimination under state or federal law if the employer complies with the Ban the Box law?

Yes. The use of criminal background information by an employer to eliminate candidates for employment may constitute a discriminatory practice if the policy has a disproportionate impact for a class of individuals, the employer does not use a targeted screen and the employer fails to provide the applicant with an opportunity to respond to the criminal background information obtained on the applicant.

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The discussion of how a criminal background check policy may violate anti-discrimination laws is beyond the scope of this FAQ document. However, a good discussion on this issue can be found within the EEOC Technical Assistance Guidance on the Use of Arrest and Convictions Records, published on April 25, 2012.

How is the Ban the Box law enforced?

The Minnesota Department of Human Rights (MDHR) is charged with enforcing this law, as there is no private cause of action. MDHR is seeking to engage in a comprehensive education program to bring about compliance with employers.

What are the penalties for violating the Ban the Box law?

The penalties are as follows:

- For employers that employ 10 or fewer persons at a site, the penalty is up to \$100 for each violation, not to exceed \$100 in a calendar month.
- For employers that employ 11 to 20 persons at a site, the penalty is up to \$500 for each violation, not to exceed \$500 in a calendar month.
- For employers that employ more than 20 persons at one or more sites, the penalty is up to \$500 for each violation, not to exceed \$2,000 in a calendar month.

Where can I find information on how to properly conduct a criminal background check?

The Equal Employment Opportunity Commission published [guidance for employers](#) on conducting criminal background checks on April 25, 2012. Employers should review the guidance to ensure compliance with federal and state anti-discrimination laws.

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