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## Rhode Island Enacts “Ban the Box” Law Prohibiting Employment Application Criminal History Inquiries Until the First Job Interview

By Rod Fliegel and Jennifer Mora

Effective January 1, 2014, a recent amendment to Rhode Island law will restrict the timing of pre-employment inquiries by Rhode Island employers about a job applicant’s criminal past. Employers who are covered by the law may not inquire about an applicant’s prior criminal history until during or after the first interview with the applicant.

The amendment to Rhode Island’s Fair Employment Practices law reflects the trend toward so-called “Ban the Box” laws that have been enacted in other jurisdictions.<sup>1</sup> The Equal Employment Opportunity Commission (EEOC) has likewise endorsed this limitation in its updated guidance regarding consideration of arrest and conviction records under Title VII of the Civil Rights Act of 1964.<sup>2</sup>

### Summary

Prior to the first interview, employers are prohibited from asking in a job application whether a job applicant has ever been arrested, charged with or convicted of any crime. Employers also may not pose the question verbally to job applicants prior to a job interview.

Rhode Island’s Fair Employment Practices law defines the term “employer” as “the state and all political subdivisions of the state and any person in the state employing four (4) or more individuals, and any person acting in the interest of an employer directly or indirectly.”

The term “conviction” is defined as “any verdict or finding of guilt after a criminal trial or any plea of guilty or nolo contendere to a criminal charge.”

Exempt from the prohibition are applications for law enforcement agency positions or positions related to law enforcement agencies. In addition, pre-interview criminal history questions are

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1 See Rod M. Fliegel, Pam Salgado, Dan Thieme and Jennifer Mora, [Seattle Adopts Ordinance Limiting Inquiries Into and Use of Criminal Records for Employment Purposes](#), Littler ASAP (June 20, 2013); Dale Deitchler, Rod Fliegel, Susan Fitzke and Jennifer Mora, [Minnesota Enacts “Ban the Box Law” Prohibiting Employment Application Criminal History Checkmark Boxes and Restricting Criminal Record Inquiries Until After Interviews or Conditional Job Offers](#), Littler ASAP (May 17, 2013); Jennifer Mora, Rod Fliegel and Sherry Travers, [The Flurry of New Employment Laws Regulating the Use of Criminal Records Continues with Expanded Restrictions in Indiana, North Carolina, Texas, and Buffalo, New York](#), Littler ASAP (June 7, 2013).

2 See Rod Fliegel, Barry Hartstein, and Jennifer Mora, [EEOC Issues Updated Criminal Record Guidance that Highlights Important Strategic and Practical Considerations for Employers](#), Littler ASAP (Apr. 30, 2012).

permissible where (1) the employer is precluded by law from hiring persons with specified criminal records, and (2) a standard fidelity bond or an equivalent is required for the position and one or more prior offenses would disqualify the applicant from obtaining such a bond. In both circumstances, the pre-interview question must be narrowly tailored to the potentially disqualifying offenses.

## Enforcement

Aggrieved individuals may file an administrative charge with the Rhode Island Commission for Human Rights (RICHR) or a civil action alleging a violation of the Fair Employment Practices law. The RICHR and Rhode Island courts have the authority to award an aggrieved applicant with a range of remedies including back pay, compensatory damages, punitive damages, and attorney's fees and costs.

## Action Steps for Employers

Rhode Island and multi-state employers need to make sure that their current job application complies with applicable law, including Rhode Island's new law. Given the recent attention on background checks by the EEOC, state and local fair employment agencies, and plaintiffs' lawyers, this is an excellent opportunity for employers to review their application and hiring processes. In particular, employers should consider (1) restrictions on the inquiry into and use of criminal information under EEOC guidance and certain state laws (e.g., Indiana),<sup>3</sup> (2) the use of credit information under other state laws (e.g., Colorado),<sup>4</sup> and (3) compliance with federal and state fair credit reporting laws, including the Fair Credit Reporting Act.<sup>5</sup>

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- 3 See Rod Fliegel, Jennifer Mora, and William Simmons, [Indiana Passes New Legislation Restricting Criminal History Information Reported in Background Checks](#), Littler ASAP (Jun. 26, 2012).
  - 4 See Rod Fliegel, Philip Gordon, and Jennifer Mora, [Colorado is the Latest and Ninth State to Enact Legislation Restricting the Use of Credit Reports for Employment Purposes](#), Littler ASAP (Apr. 26, 2013).
  - 5 See Rod Fliegel and Jennifer Mora, [Employers Must Update FCRA Notices for Their Background Check Programs Before January 1, 2013](#), Littler ASAP (Sep. 4, 2012).