

State Rules Register Alert

March, 2016

Philadelphia Ban the Box

Philadelphia has amended its Ban-the-Box ordinance: Chapter 9-3500 of the Philadelphia Code. These changes became effective on March 14, 2016. The following are key points regarding the changes in this ordinance:

1. The prior law restricted inquiries into the criminal history of an applicant until after the first interview. The amendment restricts the inquiries further, being moved back to after a conditional job offer has been made.
2. Prior law covered employers with 10 or more employees. The new ordinance covers all employers within the city of Philadelphia regardless of size. The ordinance does not further define whether that means the employer's location is within the city limits of Philadelphia or just has employees within the city limits. Most likely it only applies to employers physically located within the city. The law does now exclude domestic servants that work in and about a private home in which the employer resides, as well as continuing the exemption for law enforcement.
3. An employer cannot ask whether an applicant is willing to submit to a background check prior to a conditional offer of employment.
4. The disclosure notice that criminal records will be sought must contain a statement such as: "consideration of a criminal record will be tailored to the requirements of the job". Thus, the standard disclosure and authorization form normally used by CRAs will not work for Philadelphia employers. If a CRA has furnished disclosure and authorization forms to its clients' it needs to modify those forms or tell them to no longer use them after March 14, 2016 so their Philadelphia clients will be in compliance with this new requirement.
5. The ordinance now outlines, much like New York City, what factors must be considered by the employer when assessing the criminal record of the applicant. These are: (a) the nature of the offense; (b) the time that has passed since the offense; (c) the applicant's employment history before and after the offense and any period of incarceration; (d) the particular duties of the job being sought; (e) any character or employment references provided by the applicant; and (f) any evidence of applicant's rehabilitation since the conviction.
6. Employers may only consider convictions or release from confinement within the last seven (7) years. By implication non-conviction information cannot be considered.
7. **Notice of rejection.** The ordinance uses confusing language regarding whether this is intended to be a pre-adverse action or adverse action notice, but it would seem that this is intended to be part of the pre-adverse action notice because the ordinance requires that the applicant be informed that he/she be allowed ten (10) days to provide evidence of inaccuracy of the information or provide an explanation. The notice, like the FCRA, requires a copy of the report be provided to the applicant with the notice.
8. **Right to sue.** The ordinance now permits private lawsuits for the violation of this ordinance if the individual follows the required administrative steps. Violation of the ordinance, a Class III offense, is subject to a fine of up to \$2,000 per violation.
9. **Posting notice.** The Philadelphia Commission on Human Relations will create a notice of rights which each employer must post at their place(s) of employment. A check of the Commission's website indicates that no notice has been posted as of yet. However, note that the ordinance does not become effective until mid-March, so checking with the Commission's website as that date approaches may yield results. Once on the website click on "law and regulations", then click on "Posters" mid-page.

As always, Ban-the-Box laws apply to employers/end-users.