



FEBRUARY 1, 2019

## Westchester County Enacts “Ban The Box” Law

On March 4, 2019, Westchester County’s “ban the box” law (the “Law”) prohibiting employers from including questions about applicants’ criminal convictions or arrests on employment applications will go into effect. The Westchester County legislature passed the Law in December 2018.

### **Key Aspects of the Law**

The Law prohibits Westchester County employers with at least four employees from making any inquiry or statement related to an applicant’s criminal conviction or arrest record on an application for employment. Employers in Westchester County are only restricted from asking about criminal history on the employment application itself. After submission of the employment application, employers are permitted to ask about an applicant’s criminal history, including during an interview or prior to making a conditional offer of employment.

The Law further prohibits employers from inquiring (at any time during the hiring process) about certain types of criminal offenses, such as youthful offender adjudications and convictions that have been sealed or expunged. The Law also bans employment advertisements, solicitations, or publications containing any “limitation, or specification in employment based on a person’s arrest record or criminal conviction.”

In addition, employers are prohibited from including limitations or specifications concerning arrest or conviction records in job postings or advertisements. However, the Law expressly sets forth two exemptions: (1) where a federal, state, or county law or regulation requires criminal background checks for employment purposes; and (2) applications to positions in law enforcement agencies, such as police or peace officers.

## **Penalties**

The Law imposes steep civil penalties for violations; compensatory damages as well as up to \$10,000 in punitive damages (plus reasonable attorneys' fees) may be awarded. However, the Law does not include any posting or notification requirements.

## **Takeaway**

Employers should revise job applications used in Westchester County to remove questions concerning an applicant's prior arrests, criminal charges, or criminal convictions. As the Law affects virtually every Westchester County employer, we encourage you to contact us for assistance in complying with or interpreting the Law.

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If you have any questions regarding this alert, or any other issue, please do not hesitate to contact us.

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