# State Survey – Considering Criminal Convictions in Private Employment Decisions

## Labor & Employment Law Update

on April 22, 2021


As we previously discussed, Illinois has moved beyond "ban-the-box" and now significantly restricts employers' ability to consider criminal convictions when making employment decisions. (For more details see our employer's guide and join our complimentary webcast on April 29, 2021.)

Illinois is not an outlier. Several states have enacted or are considering similar legislation. Below is a short summary of these state laws applicable to private employers. All of these statutes have exceptions. Note too, the fact that a state is not listed does not necessarily mean it has no restrictions. These laws are nuanced and rapidly changing and many local governments have enacted their own regulations. Seek advice from trusted counsel before basing an employment decision on an individual's criminal history.

**California:** Employers with 5 or more employees may not deny a position based (in whole or in part) on a criminal conviction without first making an individualized assessment (in accordance with the statute) as to whether the conviction has a direct and adverse relationship to the job such that it justifies denying the position. The law sets forth a detailed process to regulate an employer's consideration of criminal convictions and imposes notice, disclosure, and waiting period requirements if an employer acts on a conviction.

**Connecticut:** It is currently unlawful to deny employment *with the state* on the basis of a criminal conviction without considering factors set forth in the statute. Pending legislation would expand the law to private employers.

**Hawaii:** It is unlawful to base an employment decision on a conviction unless it is a felony conviction in the last 7 years, or a misdemeanor conviction in the last 5 years, and the conviction bears a "rational relationship" to the duties of the position.

**New York:** It is unlawful to take an adverse action based on criminal history unless there is a direct relationship between the conviction and the employment position or if the employment would pose an unreasonable risk. The statute includes factors to be considered in making this assessment. Upon request, the employer must provide a written statement setting forth the reasons for denying employment on the basis of conviction.

**Pennsylvania:** It is unlawful to consider a job applicant's conviction history unless the conviction relates to the applicant's suitability for the particular position sought. An employer also must notify the applicant if employment was denied, in whole or in part, on the basis of criminal history.

**Washington D.C.:** Private employers with more than 10 employees may not base employment decisions on criminal convictions unless there are reasonable and legitimate business reasons in accordance with factors set forth in the statute.

**Wisconsin:** It is unlawful to discriminate on the basis of an arrest record or conviction record. There are exceptions to this rule for convictions and pending criminal charges that substantially relate to the particular job.

In addition, ban-the-box laws apply to private employers in California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, Washington, and Washington D.C., as well as many other cities and counties across the country (and a total of 36 states have some form of ban-the-box laws applicable to public employment). Many state and local governments also prohibit or regulate employers' consideration of convictions that have been sealed or expunged, arrests that did not result in conviction, and/or juvenile convictions.