

# New Jersey Employers: The Potential Criminal In Your Midst

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On August 11, 2014, Governor Christie signed legislation known as “The Opportunity to Compete Act” barring employers from making criminal background inquiries during the initial employment application process. This sweeping legislation transforms the hiring process for many employers. Many employers are asking questions about the legislation. If you are not, below are the questions you should be asking and the information you need to avoid substantial fines and penalties.

## **When does the new law take effect?**

The new law takes effect on March 1, 2015.

## **Does the new law apply to all employers?**

No. The Opportunity to Compete Act (also known as Ban the Box) only applies to employers who employ 15 or more employees for 20 calendar weeks. Furthermore, certain positions are exempt from the Act, including law enforcement, corrections, judiciary, homeland security and emergency management.

## **What Can an Employer Ask about an Applicant’s Criminal Background?**

Employers can ask about the applicant’s criminal record after the employer has performed an interview, made a determination that the applicant is qualified for the position and after the applicant has been selected. Employers are prohibited from asking an applicant about his/her criminal record until after these initial hiring steps have been completed. However, unlike legislation in other states, employers are permitted to make an inquiry about an applicant’s criminal record immediately prior to

making a formal offer.

### **Can a Job Application Include any Questions about the Applicant's Criminal Record?**

No, not during the initial application process. Any application you currently use with this question must be revised prior to March 1, 2015.

### **After the Application Process is Completed, Can I ask Anything I want About the Applicant's Criminal Background?**

No. Employers are prohibited from making inquiries into expunged criminal records, arrests not resulting in a conviction, disorderly persons convictions where the date or sentence or release from jail is 5 or more years earlier (whichever is later), convictions of crimes in the fourth degree in which the date of sentence or release from jail (whichever is later) occurred 10 or more years earlier.

### **What are the Penalties for Violations?**

There are civil penalties in the way of fines. The fines vary depending on the number of employees you employ and whether you have committed any previous violations. The fines vary from \$500 to \$7,500. Applicants cannot file a private cause of action in the Superior Court for violations of the Act. It is important to note that even for one position, an employer can be fined for each applicant where the employer made inquiries during the initial application process.

The Opportunity to Compete Act will impact how most, if not all employers scrutinize job applicants. It is important to consult with an employment attorney to discuss your hiring practices to make sure that they comply with State and Federal employment statutes.