

Proposed Legislation Limiting Inquiries into an Applicant's Criminal History Prior to an Offer of Employment Introduced in the New York State Legislature

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On February 7, 2023, [Bill No. A03726](#) was introduced before the New York State Assembly which, if passed, would prohibit employers from inquiring about or making statements regarding “the arrest record or conviction record of any person who is in the process of applying for employment or interviewing for employment with such employer.”

This proposed legislation would effectively bring New York State into alignment with numerous other states and cities that have “banned the box” – i.e., restricted inquiries into criminal history until after the conditional offer stage. This includes New York City, which has had a similar requirement in place since 2015 pursuant to the Fair Chance Act, but which also [places additional limitations](#) on the timing of criminal inquiries during hiring and additional obligations on employers when rescinding a job offer based on criminal history.

The proposed legislation would make it an unlawful discriminatory practice under the New York State Human Rights Law for an employer, employment agency, or their agents to ask a prospective applicant any question, in writing or otherwise, about the applicant's criminal history prior to making an offer of employment. Additionally, it would be unlawful for an employer to search through public records or use consumer reports to gather information on an applicant's criminal history prior to making an offer. However, employers would still be able to conduct criminal background checks or inquire about criminal history at the pre-offer stage if those actions are pursuant to any state, federal, or local law that require criminal background checks for employment purposes or bars employment based on criminal history.

Once an applicant has received a job offer, employers would be allowed to inquire about the applicant's criminal history. An employer who decides to revoke the job offer based on such inquiry would then be required to explain to the applicant in writing the reasons for revoking the job offer and provide a "printed copy of any report indicating the [applicant's] arrest record or conviction record." The applicant would then have five (5) business days to respond to the report.

Employers should know that if the proposed legislation is signed by Governor Hochul, the law would take effect immediately after it is enacted. We will continue to monitor this bill and report on any further developments.

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