

Montgomery County Expands “Ban the Box” Law, Creates New Pitfalls for Employers

By Hayes Edwards

As of February 1, 2021, all employers doing business in Montgomery County, Maryland, with at least one employee located in the county, are subject to new prohibitions on inquiries into job applicants’ criminal history. The previous version of the County’s “Ban the Box” law, which only applied to employers with more than 15 employees, allowed such inquiries after the first interview. That original law, effective since January 1, 2015, also includes restrictions on employers’ use of information obtained from a compliant background check and inquiry process.

Now, until a conditional offer of employment has been extended, employers can neither ask if the applicant has been arrested, accused or convicted of a crime, nor can they conduct a criminal background check. “Conditional” means an offer that is conditioned solely on the results of a later background check or any other specifically-noted contingency. Certain exemptions apply, such as those employers who provide services to minors or vulnerable adults, or where the position requires federal government security clearance.

Making the restriction all the more thorny, the new law prohibits employers from *ever* asking if an applicant has:

1. been arrested without a resulting conviction, or
2. any of the following:
 - (i) a *first conviction* for trespass, disturbance of the peace, or second-degree assault;
 - (ii) any misdemeanor conviction if three years have passed since the conviction and resulting incarceration; or
 - (iii) or any confidential juvenile matter or matter that has been expunged.

Even if an applicant self-reports one of these offenses, the employer is not allowed to consider them when making hiring and promotional decisions.

In particular, this list presents a special challenge for employers who utilize broad background check processes that would not typically discern between certain types of offenses.

Any job applicant aggrieved by a violation can file a complaint with the County, with damages and penalties available. Violators can also be subject to fines of up to \$1,000 per citation.

In navigating these new restrictions, employers would be well served to review their screening procedures—especially if they rely on any third-party background check or screening services—to make sure all inquiries, applications, forms, and scripts are compliant with these new restrictions.

If you have questions or need assistance, please **contact** the **employment attorneys** at Paley Rothman.

Links: [Legislative info](#)

[PDF](#)