



# State Laws Restricting Use of Applicants' Criminal Conviction Histories by Employers (as of July 2016)

Please note that while the information contained herein is up-to-date and accurate to the best of our knowledge, EEAC cannot guarantee that every applicable state or local law or applicable provision of state or local law has been identified and summarized. Accordingly, we recommend that you check the law of the particular state in which you have an interest to ensure compliance.

## CONNECTICUT

"Employer" means any person engaged in business who has one or more employees.

No employer shall inquire about a prospective employee's prior arrests, criminal charges or convictions on an initial employment application, unless (1) the employer is required to do so by an applicable state or federal law, or (2) a security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment.

No employer or employer's agent, representative or designee may require an employee or prospective employee to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased.

No employer or employer's agent, representative or designee shall discharge, or cause to be discharged, or in any manner discriminate against, any employee solely on the basis that the employee had, prior to being employed by such employer, an arrest, criminal charge or conviction, the records of which have been erased, or that the employee had, prior to being employed by such employer, a prior conviction for which the employee has received a provisional pardon or certificate of rehabilitation.

An employee or prospective employee may file a complaint with the Labor Commissioner alleging an employer's violation of this section.

Conn. Gen. Stat. § 31-51i

Effective Date: January 1, 2017

EEAC Memo: n/a



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## HAWAII

An employer may inquire about and consider an individual's criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment provided that the conviction record bears a rational relationship to the duties and responsibilities of the position. Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

The employer may consider the employee's conviction record covering only the most recent ten years.

Haw. Rev. Stat. § 378-2.5

Effective Date: 1998

EEAC Memo: 14-177



# State Laws Restricting Use of Applicants' Criminal Conviction Histories by Employers (as of July 2016)

## ILLINOIS

Employer pre-screening.

(a) An employer or employment agency may not inquire about or into, consider, or require disclosure of the criminal record or criminal history of an applicant until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview by the employer or employment agency or, if there is not an interview, until after a conditional offer of employment is made to the applicant by the employer or employment agency.

(b) The requirements set forth in subsection (a) of this Section do not apply for positions where:

(1) employers are required to exclude applicants with certain criminal convictions from employment due to federal or State law;

(2) a standard fidelity bond or an equivalent bond is required and an applicant's conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond, in which case an employer may include a question or otherwise inquire whether the applicant has ever been convicted of any of those offenses; or

(3) employers employ individuals licensed under the Emergency Medical Services (EMS) Systems Act.

(c) This Section does not prohibit an employer from notifying applicants in writing of the specific offenses that will disqualify an applicant from employment in a particular position due to federal or State law or the employer's policy.



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## MASSACHUSETTS

It shall be an unlawful practice for an employer to request any information, regarding:

- (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or
- (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or
- (iii) any conviction of a misdemeanor that occurred five or more years prior to the date of the application for employment or such request for information, unless such person has been convicted of any offense within five years immediately preceding the date of such application for employment or such request for information.

It shall be an unlawful practice for an employer to request on its initial written application form criminal offender record information, except if:

- (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses; or
- (ii) the employer or an affiliate of such employer is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal offenses.



# State Laws Restricting Use of Applicants' Criminal Conviction Histories by Employers (as of July 2016)

## MINNESOTA

A private employer may not inquire into or consider or require disclosure of the criminal record or criminal history of an applicant for employment until the applicant has been selected for an interview by the employer or, if there is not an interview, before a conditional offer of employment is made to the applicant.

This section does not prohibit an employer from notifying applicants that law or the employer's policy will disqualify an individual with a particular criminal history background from employment in particular positions.

Minn. Stat. § 364.021    Effective Date: January 1, 2014    EEAC Memo: 14-177



# State Laws Restricting Use of Applicants' Criminal Conviction Histories by Employers (as of July 2016)

## NEW JERSEY

Prohibited actions by employer during initial employment application process:

An employer shall not require an applicant for employment to complete any employment application that makes any inquiries regarding an applicant's criminal record during the initial employment application process.

An employer shall not make any oral or written inquiry regarding an applicant's criminal record during the initial employment application process.

Notwithstanding the provisions above, if an applicant discloses any information regarding the applicant's criminal record, by voluntary oral or written disclosure, during the initial employment application process, the employer may make inquiries regarding the applicant's criminal record during the initial employment application process.

Nothing set forth in this section shall be construed to prohibit an employer from requiring an applicant for employment to complete an employment application that makes any inquiries regarding an applicant's criminal record after the initial employment application process has concluded or from making any oral or written inquiries regarding an applicant's criminal record after the initial employment application process has concluded. The provisions of this section shall not preclude an employer from refusing to hire an applicant for employment based upon the applicant's criminal record, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon, provided that such refusal is consistent with other applicable laws, rules and regulations.

Prohibitions relative to employer advertisements:

An employer shall not knowingly or purposefully publish, or cause to be published, any advertisement that solicits applicants for employment where that advertisement explicitly provides that the employer will not consider any applicant who has been arrested or convicted of one or more crimes or offenses.

Exceptions to prohibited actions by employers:

An employer shall not be prohibited from requiring an applicant for employment to complete an employment application that makes any inquiries regarding an applicant's criminal record during the initial employment application process or from making any oral or written inquiries regarding an applicant's criminal record during the initial employment application process if: 1) a criminal history record background check is required by law, rule or regulation; or 2) the position is designated by the employer to be part of a program or systematic effort designed predominantly or exclusively to encourage the employment of persons who have been arrested or convicted of one or more crimes or offenses.



# State Laws Restricting Use of Applicants' Criminal Conviction Histories by Employers (as of July 2016)

## OREGON

It is an unlawful practice for an employer to exclude an applicant from an initial interview solely because of a past criminal conviction.

An employer excludes an applicant from an initial interview if the employer:

- (a) Requires an applicant to disclose on an employment application a criminal conviction;
- (b) Requires an applicant to disclose, prior to an initial interview, a criminal conviction; or
- (c) If no interview is conducted, requires an applicant to disclose, prior to making a conditional offer of employment, a criminal conviction.

Subject to the sections above, nothing in this section prevents an employer from considering an applicant's conviction history when making a hiring decision.

Exceptions: The sections above do not apply

If federal, state or local law, including corresponding rules and regulations, requires the consideration of an applicant's criminal history;

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or,

To an employer seeking a nonemployee volunteer.

Ore. Rev. Stat. § 659A.360

Effective Date: January 1, 2016

EEAC Memo: 16-086



# State Laws Restricting Use of Applicants' Criminal Conviction Histories by Employers (as of July 2016)

## RHODE ISLAND

It shall be an unlawful employment practice for any employer to include on any application for employment:

a question inquiring either orally or in writing whether the applicant has ever been arrested, or charged with or convicted of any crime; provided, except:

(i) If a federal or state law or regulation creates a mandatory or presumptive disqualification from employment based on a person's conviction of one or more specified criminal offenses, an employer may include a question or otherwise inquire whether the applicant has ever been convicted of any of 1 those offenses; or

(ii) If a standard fidelity bond or an equivalent bond is required for the position for which the applicant is seeking employment and his or her conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond, an employer may include a question or otherwise inquire whether the applicant has ever been convicted of any of those offenses; and

(iii) Notwithstanding, any employer may ask an applicant for information about his or her criminal convictions at the first interview or thereafter, in accordance with all applicable state and federal laws.

R.I. Code § 28-5-7(7)

Effective Date: January 1, 2014

EEAC Memo: 14-177



# State Laws Restricting Use of Applicants' Criminal Conviction Histories by Employers (as of July 2016)

## VERMONT

- a) An employer shall not request criminal history record information on its initial employee application form.
- b) An employer may inquire about a prospective employee's criminal history record during an interview or once the prospective employee has been deemed otherwise qualified for the position.
- c) An employer may inquire about criminal convictions on an initial employee application form if the following conditions are met:
  - i) the prospective employee is applying for a position for which any federal or state law or regulation creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses; or
  - ii) the employer or an affiliate of the employer is subject to an obligation imposed by any federal or state law or regulation not to employ an individual, in either one or more positions, who has been convicted of one or more types of criminal offenses; and the questions on the application form are limited to the types of criminal offenses creating the disqualification or obligation.
- d) An employer shall be permitted to inquire about criminal convictions on an initial employee application form even if the federal or state law or regulation creating an obligation for the employer or its affiliate not to employ an individual who has been convicted of one or more types of criminal offenses also permits the employer or its affiliate to obtain a waiver that would allow the employer or its affiliate to employ such an individual.
- e) If an employer inquires about a prospective employee's criminal history record information, the prospective employee, if still eligible for the position under applicable federal or state law, must be afforded an opportunity to explain the information and the circumstances regarding any convictions, including post-conviction rehabilitation.
- f) An employer who violates the provisions of this section shall be assessed a civil penalty of up to \$100.00 for each violation.



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## DISTRICT OF COLUMBIA

An employer may not make an inquiry about or require an applicant to disclose or reveal:

- (1) An arrest; or
- (2) A criminal accusation made against the applicant, which:
  - (A) Is not then pending against the applicant; or
  - (B) Did not result in a conviction.

An employer may not make an inquiry about or require an applicant to disclose or reveal a criminal conviction until after making a conditional offer of employment.

Following a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant or take an adverse action against an applicant for a legitimate business reason. The employer's determination of a legitimate business reason must be reasonable in light of the following factors:

- (1) The specific duties and responsibilities necessarily related to the employment sought or held by the applicant;
- (2) The bearing, if any, of the criminal offense for which the applicant was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities;
- (3) The time which has elapsed since the occurrence of the criminal offense;
- (4) The age of the applicant at the time of the occurrence of the criminal offense;
- (5) The frequency and seriousness of the criminal offense; and
- (6) Any information produced by the applicant, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense.

D.C. Code § 32-1342

Effective Date: August 29, 2014

EEAC Memo: 14-177