



Philadelphia Expands “Ban the Box” Ordinance

On Dec. 15, 2015, Mayor Michael Nutter signed Bill No. 150815, thereby amending and expanding Philadelphia’s “Ban the Box” law. The amendments are set to become effective March 14, 2016.

To begin, the “Ban the Box” law—the Philadelphia Fair Criminal Records Screening Ordinance (“Ordinance”)—will now apply to all employers with at least one employee in Philadelphia. The law previously only applied to employers with 10 or more employees.

The Ordinance will now also require employers to delay any criminal record inquiry until after a conditional offer of employment has been made. This is a significant change from the previous restriction that allowed criminal record inquiries to be made after a “first interview.” This includes removing any criminal history questions from employment applications, and the Ordinance goes further by explicitly stating that multi-state applications may not include the question with an instruction for Philadelphia applicants not to answer. Employers must avoid any inquiries regarding an applicant’s willingness to submit to a background check before a conditional offer. Employers may, however, give notice of their intent to conduct a criminal background check after any conditional offer is made. The Ordinance specifies that the notice must be “concise, accurate,

made in good faith, and shall state that any consideration of the background check will be tailored to the requirements of the job.”

Once it becomes lawful for employers to consider criminal history, they may only consider convictions that occurred less than seven years ago. The Ordinance requires employers to establish a process for an individualized assessment of each applicant and the termination of any practices that automatically exclude any candidates with certain criminal records. If an employer rejects an applicant for a job opening based in whole or in part on criminal record information, the employer must notify the applicant in writing of such decision and its basis, and must provide the applicant with a copy of the criminal history report. The employer must then allow the applicant 10 business days to provide any evidence of the inaccuracy of the information or to provide an explanation.

The Ordinance also includes a posting requirement, requiring employers to revise posted workplace notices to include notice of the Ordinance, once a poster is issued by the Philadelphia Commission on Human Relations.

Notably, the Ordinance now includes a private right of action for actual damages, attorneys’ fees, equitable relief and punitive damages, in addition to a potential administrative assessment of damages and up to \$2,000 in “punitive damages” per



violation. The Ordinance provides an exemption and does not apply if the inquiries or adverse actions prohibited by the Ordinance are specifically authorized or mandated by any other applicable law or regulation.

Truescreen, Inc. will not automatically suppress reported criminal information to comply with this new requirement. If you would like criminal records that are older than seven years to be automatically suppressed in accordance with the Ordinance, please contact your sales executive or account manager.

For the full text of the Ordinance, [click here](#).