

Compliance Today – April 2018 Ban the Box: A brief overview of criminal background checks

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Compliance offices do not function alone; they must work closely and frequently with other departments to be effective. Look no further than policies and procedures such as an organization’s legal or human resources (HR) working protocol; these common policies are a testament to the amount of interactive work compliance officers encounter. Unsurprisingly, laws, regulations, and rules in non-healthcare areas may demand attention from the Compliance office. Compliance commonly works with HR for issues concerning discipline, hiring, background checks, and sanction screening. For that reason, compliance officers should be aware of a growing type of legislation known as “Ban-the-Box” (BTB) laws.

BTB, a civil rights campaign, has successfully passed its namesake legislation (also known in certain jurisdictions as “Fair Chance” laws) in at least 29 states and 150 cities and counties throughout the United States.^[1] California passed a statewide BTB law as recently as October 2017.^[2] These BTB laws prohibit employers from running criminal background checks or asking certain questions about criminal convictions during the employment application and hiring process, an area traditionally within HR’s purview. However, issues relating to hiring and background checks, which are typically rigorous for those who provide care, require the compliance officer’s attention as well. Although BTB laws do not all share the same exact elements, this article details the commonalities among them and the primary varieties within the shared elements.

Jurisdictional BTB distinctions

There are commonalities among most BTB laws. First, each jurisdiction sets a threshold of which organizations the law applies to and which groups of employees are protected by the law. Second, each law prohibits employers from inquiring about criminal history, but at what point the protections kick in during the hiring process depends on the jurisdiction. Finally, each jurisdiction chooses which practices are prohibited and what information employers are restricted from asking about. Understanding the differences of BTB laws across jurisdictions is crucial to healthcare compliance professionals, especially those who operate in multiple jurisdictions.

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