

## Vermont Municipalities Must Soon “Ban the Box”

Next year, Vermont will require all employers in the state to “ban the box.” So-called because of the checkbox on many job application forms, a “ban the box” bill was signed into law by Governor Shumlin in early May. When it takes effect on July 1, 2017, the new law will prevent employers, including municipalities, from asking on an initial employment application whether an applicant has ever been convicted of a crime.

The purpose of the law is to preclude the common recruiting practice of automatically eliminating any applicant who has a criminal conviction record. Such individuals will thus be provided with a greater chance at success in finding work. Vermont employers may still ask about convictions during an interview or other later step of the hiring process. (See paragraph below regarding Equal Employment Opportunity Commission [EEOC] guidance on doing so.) Additionally, the new law will not prevent questions about criminal offenses on application forms for law enforcement positions or other roles where there is a state or federal obligation to disqualify individuals based on a conviction of one or more types of offenses.

Last year, Governor Shumlin signed an executive order that implemented a “ban the box” hiring policy for Vermont state employees (other than law enforcement, corrections, or other sensitive positions). That was Vermont’s first step in joining the nationwide “ban the box” campaign which has been gaining momentum among a number of states, cities, and private employers in recent years. President Obama has likewise ordered the Office of Personnel Management to take steps to delay inquiry into criminal conviction history until later in the application process for positions across federal agencies.

In order to avoid discrimination under Title VII of the Civil Rights Act of 1964, the EEOC advises that employers only ask about criminal history of applicants for positions where such history is relevant and that questions be limited to convictions that are job-related and based on business necessity. According to EEOC guidance, when evaluating information about criminal convictions, employers need to consider what are referred to as the “Green Factors,” identified by the court in the case of *Green v. Missouri Pacific Railroad Company* 549 F.2d 1158 (8th Cir. 1977). These are:

- the nature and gravity of the offense or conduct;
- the time that has passed since the offense, conduct and/or completion of the sentence; and
- the nature of the job held or sought.

The EEOC’s full guidance in this area is available online [here](#).

Municipalities should review job application forms to ensure that any questions on prior criminal convictions are removed before the July 1, 2017, effective date (except on forms specific to law enforcement or other exempted positions). VLCT provides two model job application forms (for positions other than public safety or commercial motor vehicle operator positions) on the VLCT Municipal Assistance Center’s [Human Resources Assistance Program web page](#). Additionally, VLCT-PACIF’s [Drug and Alcohol Testing Manual](#) provides a model employment application form for commercial motor vehicle operators (along with checklists and other important information).

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