

Philadelphia's Expanded and Amended 'Ban-the-Box' Law Takes Effect

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Philadelphia employers should review their criminal background investigation practices and procedures in light of recent amendments to [Philadelphia's Fair Criminal Record Screening Standards Ordinance](#) (FCRSS) that took effect on January 6, 2026, after being signed into law on October 8, 2025.

Multistate employers also need to keep in mind compliance with varying fair chance or ban-the-box laws in other jurisdictions as well, as many states have enacted some limitations on use of criminal histories in hiring decisions, including California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, Oregon, Rhode Island, Texas, Vermont, Washington, and Wisconsin.

Who Is Covered?

The amended FCRSS applies to most private employers. Notably, the ordinance's protections are not limited to employees and job applicants. Rather, it covers all individuals "employed or permitted to work at or for" a private employer within Philadelphia's city limits, including individuals engaged as independent contractors, transportation network company drivers, rideshare drivers, and other gig economy workers. Throughout this article, "employee" is used as defined in the FCRSS, which includes all workers and independent contractors.

Key Changes and Requirements

The amendments to the FCRSS include the following significant changes and requirements:

- *Notice of Background Checks.* If an employer gives notice to prospective applicants of its intention to conduct a background check as part of the hiring process, the notice must indicate that consideration of the background check will be an individualized assessment based on the job's specific requirements and the applicant's specific record.
- *Reduced Lookback Period.* The lookback period for misdemeanor convictions has been reduced from seven years to four years, excluding any periods of incarceration. The lookback period for felony convictions remains at seven years.
- *Summary Offenses.* Employers cannot consider an applicant's or employee's summary conviction record, including minor infractions such as traffic offenses, criminal mischief, and disorderly conduct.
- *Expunged or Sealed Records.* Employers are prohibited from considering any expunged or sealed conviction

record, even if the record appears on a criminal background check.

- *Consideration of Rehabilitation.* In undertaking an individualized assessment of an applicant or employee, an employer is required to consider credible evidence of the applicant's or employee's rehabilitation since conviction, including the person's completion of a mental health or substance use disorder treatment program, completion of a job training program, completion of a GED or postsecondary education program, service to the community, work history in a related field since the time of conviction or incarceration, and active occupational licensure, commercial driver licensure, or other licensure necessary to perform the specific duties of the job.
- *Notification of Provisional Decision and Rebuttal Right.* If an employer intends to reject an applicant or employee based, even in part, on the person's criminal record, the employer must notify the person in writing of the provisional decision and the basis for the decision. The employer also must provide the person with a copy of the criminal record used and a notice that includes: (i) a summary of the applicant's or employee's rights under the FCRSS; (ii) a statement that the employer will consider evidence of any error in the record and evidence of rehabilitation and mitigation if provided by the applicant or employee (with a list of the types of evidence that may be considered); and (iii) instructions on how the applicant or employee can provide such evidence or explanation. Before the employer may make a final determination, it must permit the applicant or employee at least 10 business days to provide evidence of an error in the criminal record report or rehabilitation or mitigation evidence.
- *Anti-retaliation Clause.* Employers are prohibited from interfering with a person's rights under the ordinance. There is a rebuttable presumption of unlawful retaliation when an employer discharges, suspends, demotes, or takes other "adverse action" against a person within 90 days after the person engages in protected activity (*i.e.*, exercises their rights under the ordinance). The presumption can be overcome if the employer can show that it took the adverse action for just cause and would have done so notwithstanding the protected activity.
- *Excessive Supervision.* "Adverse action" is defined to include any action that "is intended to harass" an employee in connection with work, "including excessive and unreasonable supervision" because of the employee's criminal record. For example, employers are prohibited from placing an employee under different or heightened supervision compared to similarly situated employees unless the supervision is justified by an individualized assessment of the specific risks associated with the employee's criminal history or conduct.

Advice for Philadelphia Employers

Employers who hire and employ workers in Philadelphia should evaluate and update their existing hiring and promotion processes and policies to ensure compliance with the amended FCRSS, as well as existing local, state, and federal laws. For example, employers may need to revise job postings, job applications, criminal background check authorizations, and adverse action notifications, as well as career websites. Additionally, employers should consider training recruiters, hiring managers, and other human resources personnel on the amendments to the FCRSS, including training on the permissible inquiries into and uses of an applicant's or employee's criminal history and how to conduct and document compliant individualized assessments.

If you have questions about how the FCRSS or any other federal, state, or local background check or fair employment law applies to your organization or need your policies reviewed for compliance, please reach out to your employment counsel.

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