

# State Rules Register Alert

October 30, 2015

## New York City: Ban the Box and Required Form

On October 27, 2015, the effective date of its new law, New York City joined cities and states across the country that have enacted a ban-the-box law. As always, these laws impact the end-user and not the CRA. These laws simply set a time when an employer can seek information on a consumer's criminal history.

However, New York City goes a step further and incorporates state requirements under §296(16) Article 15 of the New York Executive Law and Article 23A of the New York Corrections Law. Those laws require the employer to do a work related analysis before rejecting an applicant based upon their criminal record. New York City has created its own version of that document. That form - called the Fair Chance Act Notice - is found in the Forms Section, in the Resource Tabs area.

The basic structure of this law is that an employer can only inquire about the applicants criminal record after an offer of employment has been made. The law has a specific provision relating to staffing firms and defines an offer of employment to mean to be an offer to be placed in the pool of available workers. It is not the offering of an actual assignment.

### Exemptions:

1. Employers with 4 or fewer employees. Independent contractors count as employees for the purposes of coverage of this law.
2. Background inquiries required by federal, state or local laws or where laws make certain convictions a bar to employment.
3. Police or Peace Officers. These are positions with the following employers: Police Department, Fire Department, Department of Corrections, Department of Investigation, Department of Probation, Division of Youth and Family Services, Business Integrity Commission and the District Attorney's Office.
4. City positions identified on the city website that involves law enforcement, providing services to a vulnerable population or positions subject to bribery or other corruption. At this point, such a list does not seem to have been created.

**What can be considered by an employer?** An employer may consider convictions and pending cases. Anything else is not to be considered.

**Conditions prior to taking adverse action.** The employer must follow the following two steps before taking adverse action:

1. The employer must provide a consumer a copy of the report. Further, the employer is to provide a minimum of three (3) business days before taking adverse action and the position must be held open during that time. The law does not require that a dispute process be completed prior to taking adverse action.
2. Conduct an Article 23a analysis and complete the required form and provide a copy to the applicant.