

BAN THE BOX

SCS HR Community Meeting 6.16.2016

Purpose of Presentation

The purpose of this presentation is to provide a general overview on the “Ban the Box” movement.

This presentation is not intended to provide support or opposition.

This presentation should not be viewed as an official legal opinion.

What is Ban the Box?

Began as the rallying cry of “All of Us or None” organizers that refers to removing the conviction history check-box from job applications.

“All of Us or None” is a grassroots, civil rights organization led by formerly incarcerated and convicted people.

Advocates for Ban the Box

Advocates for Ban the Box indicate there is a problem with employers not hiring people with conviction records.

Arguments for Support

- 70 million adults with arrests or convictions in the United States who are turned away from jobs despite their skills and qualifications.
- The “Box” on a job application is a barrier because it discourages people from applying.
- Artificially narrows the applicant pool of qualified workers when applications are tossed out.
- Research indicates that a conviction records reduces the likelihood of a job callback or offer by nearly 50%.

Arguments for Support

- Advocates for Ban the Box suggest that adopting Fair-Chance Policies is the Solution.
- Research indicates that once an employer has had the chance to examine the qualifications of the applicant, the employer would be more willing to hire the applicant.

Arguments for Opposition

- Many employers view Ban the Box as another hurdle for businesses.
- Federal and State Laws **may not** allow an employer to hire applicants with felony convictions, therefore, the box is needed.
- Increase need to conduct background checks if the box is removed, which leads to increased screening cost.
- Possible liability issues for an employer hiring an individual with a criminal history.

Fair-Chance Policies

Fair-Chance Policies

- 23 States have embraced ban the box, with 7 states extending it to private employers.
- Over 100 cities and counties across the nation have adopted policies.
- Research of those employers with adopted policies indicate that personal contact with an applicant reduces the negative effect of a criminal record on the employment decision.
- Allowing people to work increases their tax contributions and boosts sales tax, and saves money by keeping people out of the criminal justice system.
- Employment has been found to be a significant factor in recidivism rates.

Fair Chance Policies

- Fair-Chance Policies **DO NOT** require an employer to hire an individual.
- In other words, the employer retains the discretion to hire the most qualified candidate.
- Some policies only seek to limit background checks to only those positions deemed safety sensitive.
- Some policies have no limitations on background checks except as to delay any inquiries until later in the hiring process.

U.S. Equal Employment Opportunity Commission

- ❑ Supports Fair-Chance Policies
- ❑ Provides **Guidance** on the ***Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964***

E.E.O.C. Guidance

- Suggests that employers make **INDIVIDUALIZED ASSESSMENTS** instead of blanket exclusions and **CONSIDER THE AGE OF THE OFFENSE AND ITS RELEVANCE TO THE JOB**

EEOC: Individual Assessment (I.A.)

- I.A. generally means the employer informs the individual that he may be excluded from consideration because of his past criminal conduct, and provides an opportunity for the individual to demonstrate that the exclusion does not properly apply to him and considers whether the individual's additional information shows that the policy, as applied, is not job related or consistent with business necessity.
 - The facts or circumstances surrounding the offense or conduct
 - The number of offenses for which the individual was convicted
 - Age at the time of conviction, or release from prison
 - The length and consistency of employment history before and after the offense or conduct
 - Rehabilitation efforts, e.g. education/training
 - Employment or character references
 - Whether the individual is bonded under a federal, state, or local bonding program

Age of Offense and Relevance to the Job

- The Nature or Gravity of the Offense or Conduct
- The Time that Has Passed Since the Offense, Conduct and/or Completion of the Sentence
- Nature of the Job Held or Sought

Louisiana – State Employer

- ❑ HB266 by Representative Denise Marcelle, now ACT 398, prohibits a state employer from inquiring about a prospective unclassified employee's criminal history until after an interview or conditional offer of employment is made and provides for the consideration of criminal history in making employment decisions.
- ❑ Excludes positions in law enforcement or corrections or a position for which a criminal background check is required by law.
- ❑ Effective Date: 08/01/2016

Louisiana – Civil Service System

- ACT 398 of the 2016 Regular Session **does not** apply to employees in the CLASSIFIED SERVICE.
- The Department of State Civil Service will provide a mechanism in LaCareers to remove the criminal history question for agencies who announce unclassified jobs August 1, 2016 and after.

Civil Service – Ban the Box?

- ❑ The decision to Ban the Box will be decided by the State Civil Service Commission.
- ❑ A formal presentation to the Commission will occur no earlier than September 2016.

Civil Service – Current Classified Application

- Have you ever been on probation or sentenced to jail/prison as a result of a felony conviction or guilty plea to a felony charge?

C.S. Positions Requiring Felony Information

- ❑ Child Welfare Specialist and Licensing
- ❑ Law Enforcement (Police, Ag./Forestry Enforcement)
- ❑ Probation and Parole Officers
- ❑ Direct Care positions working with Children
- ❑ Certain Medicaid positions
- ❑ Corrections Guard – Therapeutic
- ❑ Professional Counselor, Social Worker, Psychologist
- ❑ Security Sensitive Homeland Security Positions
- ❑ Positions Requiring TWIC card (Transportation Worker Identification Credential)

2014 Civil Service Survey

- 67 Responses from State Agencies/Departments
- 85% conduct background checks
 - 66% conduct checks after conditional offer is made
 - 15% conduct checks after hire
 - 7% conduct when applicant contacted for interview
- 12% do not conduct background checks
- 43% of respondents indicate laws and/or statutes prevent individuals with felonies from holding a position.

2014 Civil Service Survey

- Of those who conducted checks, they consist of searches of:
 - 82% Parish/State Records
 - 42% National Criminal Records
 - 32% Federal Criminal Records
 - 43% Sex Offender Registry
 - 34% Driving Records

2014 Civil Service Survey

- 29% of respondents indicated that the removal of this question from the classified application would adversely impact the way their agency normally conducts business.
- What do you feel the general sentiment in your agency would be about supporting “Ban the Box”
 - 21% Favorable
 - 58% Unfavorable
 - 21% Other

Civil Service – What Next?

- ❑ State Agency Input – Another Survey?
- ❑ State Agency Input – Fiscal Impact?
- ❑ Recommendations to Commission.

Sources

- ACT 398 of the 2016 Regular Session
- 2014 Civil Service Survey
- E.E.O.C. Enforcement Guidance No. 915.002
4/25/2012
- National Employment Law Project www.nelp.org