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Ban the Box Legislation on its Way to Becoming Law

Last week the Minnesota House of Representatives passed Ban the Box legislation, which prohibits private employers from asking applicants about their criminal record until after they have been selected for an interview. The bill, Senate File 523, passed easily on a 107-26 vote, with 35 Republican Representatives joining all DFL Representatives voting in support. Governor Mark Dayton has indicated his support and is expected to sign the bill into law.

With passage of this legislation, Minnesota will be the third state to expand Ban the Box to private employers. Proponents believe that postponing inquiries into an applicant's criminal history until later in the hiring process will stop the practice of automatically rejecting ex-offender candidates and increase hiring opportunities for such applicants.

EEOC guidance on hiring ex-offenders requires employers to perform an individualized assessment before excluding an applicant from consideration because of criminal history. The guidance instructs employers to consider the nature of the offense, the date of the offense (or the date since incarceration ended), and the duties of the position for which the applicant is applying. Thus, even without ban the box laws (and, for Minnesota employers, even before this new law takes effect), employers should review their application process and consider removing inquiries which seek information regarding past criminal offenses.