

# A Guide to Ban the Box laws at State and County, and City Levels

*An overview of laws that may impact private employers*



Version 11 – 6/2019

This information is not meant to provide legal advice of any kind. Legal advice should be sought from your attorney or corporate counsel.

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States With Ban the Box Restrictions	Is a Conditional Offer Required to Inquire about Criminal History?	Is a Conditional Offer Required to Perform a Background Check?	Are Inquiries and/or Background Checks Permissible Before a Conditional Offer Has Been Made?	Preemption and/or Other Notable Nuance
<p><b>California (1/2018)</b></p> <p><b>Employers Covered:</b> All employers with five or more employees.</p> <p><a href="#">Assembly Bill 1008</a></p>	Yes	Yes	No	[The law does not apply to] a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history.
<p><b>Colorado</b></p> <p>Not yet signed by the Governor</p> <p>Employers covered: 11 or more employees starting on <b>September 1, 2019</b>; “all employers” as of <b>September 1, 2021</b></p> <p><a href="#">HB19-1025</a></p>	No	No	Yes; the law prohibits employers from asking about criminal history on an initial written or electronic application	The law does not apply to a position being offered or advertised if, among other things, federal, state, or local law or regulation states that someone with a specific criminal history cannot work in the position sought.
<p><b>Connecticut (1/2017)</b></p> <p><b>Employers Covered:</b> All employers with one or more employees.</p> <p><a href="#">Public Act No. 16-83</a></p>	No	No	Yes (employers may inquire into applicants’ criminal histories, but such background inquiries must occur <b>after</b> an employment application has been completed, e.g., during an interview)	<p>No employer shall inquire about a prospective employee’s prior arrests, criminal charges or convictions on an <b>initial employment application</b>, unless:</p> <p>(1) the employer is <b>required</b> to do so by an applicable state or federal law, or</p> <p>(2) a security or fidelity bond or an equivalent bond is required for the position for which the prospective employee is seeking employment.</p>

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<b>Hawaii</b>  <b>Employers Covered:</b> All employers  <a href="#">HRS § 378-2.5</a>	Yes	Yes	No	<p>[The law shall] <b>not apply</b> to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law (including employers in the business of insurance).</p> <p><b>NOTE:</b> Under the law, employers may only consider an employee's conviction record within the most recent 10 years, excluding periods of incarceration. The statute applies to <b>both</b> current and prospective employees.</p>
<b>Illinois</b>  <b>Employers Covered:</b> Any person or private entity that has at least 15 employees  <a href="#">House Bill 5701</a>	Yes (if the applicant will <b>not</b> be interviewed)	Yes (if the applicant will <b>not</b> be interviewed)	Yes (after an applicant has been determined qualified for the position and has been notified of an impending interview)	The law does <b>not apply</b> to employers that are required to exclude applicants with certain criminal convictions from employment due to federal or state law.
<b>Massachusetts</b>  <b>Employers Covered:</b> All employers  <a href="#">CORI Act Ban the Box Legislation</a>	No	No	Yes (after initial application form is submitted - but this has been interpreted to mean after an interview)	<p>The legislation contains a narrow exception that permits employers to inquire about an individual's criminal history on a <b>job application</b> if:</p> <p>(1) the applicant is applying for a position for which any federal or state law or regulation creates a mandatory or presumptive disqualification based on a conviction of certain criminal offenses; or</p> <p>(2) the employer is subject to an obligation under any federal or state regulation not to employ persons in one or more positions who have been convicted of certain criminal offenses.</p>
<b>Minnesota</b>  <b>Employers Covered:</b> All employers  <a href="#">Minn. Stat. § 364.021</a>	Yes (if the applicant will <b>not</b> be interviewed)	Yes (if the applicant will <b>not</b> be interviewed)	Yes (after an applicant is selected for an interview)	The law does <b>not apply</b> to employers who have a statutory duty to conduct a criminal history background check or otherwise take into consideration a potential employee's criminal history during the hiring process.

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<p><b>New Jersey</b></p> <p><b>Employers Covered:</b> Any person or private entity that has at least 15 employees</p> <p><a href="#">Opportunity to Compete Act</a></p>	No	No	Yes (after an initial interview has occurred with live contact with applicant - in person, by telephone or videoconference [*includes Internet searches into criminal background history])	The Act <b>allows</b> employers to request criminal history information before the first interview where the applicant may be legally precluded from holding the position by virtue of his or her criminal background and where any law, rule or regulation restricts an employer's ability to engage in specified business activities based on the criminal records of its employees.
<p><b>New Mexico</b></p> <p><b>Employers Covered:</b> Private employers (public employers were subject to a similar restriction since 2010)</p> <p><b>Effective July 1, 2019</b></p> <p><a href="#">NM SBN 00096</a></p>	No	No	Yes; the employer may take into consideration an applicant's conviction after review of the employment application and upon discussion of employment with the applicant.	The new section of the "Criminal Offender Employment Act" prohibits private employers from inquiring about an applicant's arrest or conviction history on an initial employment application (written or electronic). Nothing in the statute prohibits an employer from notifying the public or an applicant that the law or the employer's policy could disqualify an applicant who has a certain criminal history from employment in particular positions with that employer (e.g., within a job posting or during an interview).
<p><b>Oregon</b></p> <p><b>Employers Covered:</b> All employers</p> <p><a href="#">House Bill 3025</a></p>	No	No	Yes (after an initial interview is conducted)	Employers must not require an applicant to disclose a criminal conviction on an employment application, <b>prior to an initial interview</b> , or prior to making a conditional offer of employment if no interview is conducted. Exceptions are made for positions where federal, state, or local law requires consideration of an applicant's criminal history - the legislation does <b>not apply</b> , and applicants may be required to disclose criminal convictions at any stage in the hiring process.

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<p><b>Rhode Island</b></p> <p><b>Employers Covered:</b> All employers employing four or more individuals</p> <p><a href="#">Fair Employment Practices Act 28-5-7</a></p>	No	No	Yes (after an initial interview is conducted)	<p>Prior to the first interview, employers are prohibited from posing the question verbally as to whether a job applicant has ever been arrested, charged with or convicted of any crime. <b>Pre-interview criminal history questions are permissible where an employer is precluded by law from hiring persons with specified criminal records, but the pre-interview question must be narrowly tailored to the potentially disqualifying offenses.</b></p>
<p><b>Vermont (7/2017)</b></p> <p><b>Employers Covered:</b> All employers</p> <p><a href="#">H.B. 261</a></p>	No	No	Yes (during an interview or once the applicant has been deemed otherwise qualified for the position)	<p>An employer <b>may inquire</b> about a prospective employee's criminal history record during an interview or once the prospective employee has been deemed otherwise qualified for the position. An employer may inquire about criminal convictions on an <b>initial employee application form</b> if the following conditions are met:</p> <ul style="list-style-type: none"> <li>• the prospective employee is applying for a position for which any federal or State law or regulation creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses; or</li> <li>• the employer or an affiliate of the employer is subject to an obligation imposed by any federal or State law or regulation not to employ an individual, in either one or more positions, who has been convicted of one or more types of criminal offenses; and</li> <li>• the questions on the application form are limited to the types of criminal offenses creating the disqualification or obligation.</li> </ul>
<p><b>Washington, DC</b></p> <p><b>Employers Covered:</b> All employers (public and private) with more than 10 employees in D.C.</p>	Yes	Yes	No	<p>The law expressly excludes:</p> <ul style="list-style-type: none"> <li>• Any facility or employer that provides programs, services, or direct care to minors or vulnerable adults;</li> <li>• Positions where a federal or D.C. law or regulation requires consideration of an applicant's criminal history;</li> <li>• Positions designated by the employer as part of a federal or D.C. program designed to encourage employment of those with criminal histories; and the D.C. Courts.</li> </ul>

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<p><b>Washington</b></p> <p><b>Employers Covered:</b> All employers</p> <p><a href="#">Fair Chance Act (HB 1298)</a></p>	No	No	Yes (after it is determined that the applicant meets the basic criteria for the position without consideration of a criminal record)	<p>The law <b>does not apply to:</b></p> <ul style="list-style-type: none"> <li>• Any employer hiring a person who will or may have unsupervised access to children under the age of 18 or a vulnerable adult or person as defined elsewhere in state law;</li> <li>• Any employer, including a financial institution, who is expressly permitted or required under any federal or state law to inquire into, consider, or rely on information about an applicant's or employee's criminal record for employment purposes;</li> <li>• Certain law enforcement or criminal justice agencies;</li> <li>• Employers seeking non-employee volunteers; or</li> <li>• Any entity required to comply with the rules or regulations of a self-regulatory organization, as defined in section 3(a)(26) of the Securities and Exchange Act.</li> </ul>
<p><b>U.S. Virgin Islands [11/2018]</b></p> <p><b>Employers covered:</b> All employers</p> <p><a href="#">Act No. 8134</a></p>	No	No	Yes	<p>The new law prohibits employers from asking an applicant to disclose any information [<b>seemingly at any time in the hiring process and throughout employment</b>] concerning: (i) an arrest or detention that did not result in a conviction; (ii) "a referral to, or participation in, any pretrial or post trial diversion program"; or (iii) "a conviction that has been judicially dismissed or ordered sealed pursuant to law." The law also prohibits employers from seeking any of these categories of information from another source. The law applies to public and private employers of all sizes, except if:</p> <ul style="list-style-type: none"> <li>• <i>"state or federal law requires the applicant to be rejected based upon criminal history";</i></li> <li>• <i>the job position requires a satisfactory criminal background;</i></li> <li>• <i>a conviction of one or more specified offenses would disqualify the applicant from obtaining a standard bond that is required of individuals hired for the position; and</i></li> <li>• <i>"the employment is within a facility that provides programs, services, or direct care to minors or vulnerable adults including the educational system or child care."</i></li> </ul>

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<p><b>Austin, TX</b></p> <p><b>Employers Covered:</b> All employers employing 15 or more individuals whose primary location in the previous 20 weeks was in the City of Austin</p> <p><a href="#">ORDINANCE NO. 20160324-019</a></p>	<p>Yes (“conditional employment offer” means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency’s staffing pool, that is conditioned <b>solely</b> on the employer’s evaluation of the individual’s criminal history)</p>	<p>Yes</p>	<p>No</p>	<p>The ordinance <b>excludes</b> from coverage any “job for which a federal, state, or local law disqualifies an individual based on criminal history.”</p> <p><b>NOTE: Specific information pertaining to the disqualifying criminal history must be included in the adverse notification letter.</b></p>
<p><b>Baltimore, MD</b></p> <p><b>Employers Covered:</b> Private employers employing at least 10 “full-time equivalent employees” in the City of Baltimore</p> <p><a href="#">Subtitle 15. Fair Criminal-Record Screening Practices</a></p>	<p>Yes (“conditional offer” means an offer that is conditioned <b>solely</b> on the results of the employer’s subsequent inquiring into or gathering information about the applicant’s criminal record; or some other contingency expressly communicated to the applicant at the time of the offer)</p>	<p>Yes</p>	<p>No</p>	<p>The ordinance does <b>not apply</b> to any inquiry into an applicant’s criminal history that is <b>required or authorized</b> by another applicable city, federal, or state law or regulation.</p>



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<p><b>Buffalo, NY</b></p> <p><b>Employers Covered:</b> The City of Buffalo itself, as well as its vendors (including those located outside of the City), and any employer with fifteen or more people located within the City</p> <p><a href="#">Chapter 54 Ordinance Amendment</a></p>	No	No	Yes (after completion of an application and initial interview)	Employers are prohibited from asking prospective employees about their criminal conviction history during the application process and prior to the first interview. Employers <i>may</i> ask about convictions or violations if such convictions or violations would pose a bar to attaining employment under New York state or federal law.
<p><b>Chicago, IL</b></p> <p><b>Employers Covered:</b> Private employers that are licensed in Chicago and/or maintain a business facility within city limits and that have fewer than 15 employees</p> <p><a href="#">Human Rights Ordinance</a></p>	Yes (if the applicant will <b>not</b> be interviewed)	Yes (if the applicant will <b>not</b> be interviewed)	Yes (after an applicant is selected for an interview)	The law does <b>not apply</b> if an employer is required by state or federal law to exclude applicants with certain convictions.
<p><b>Columbia, MO</b></p> <p><b>Employers Covered:</b> All employers</p> <p><a href="#">Code of Ordinances Chapter 12, Article V, Sec. 12-90</a></p>	Yes	Yes	No	It is unlawful or an employer to inquire, question or otherwise seek information as to whether an applicant has ever been arrested for, charged with or convicted of any crime until after the applicant has received a conditional offer of employment. There is an <b>exception</b> for employers that are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.

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<p><b>Kansas City, MO (9/2018)</b></p> <p><b>Employers Covered:</b> All employers (public and private) with 6 or more employees)</p> <p><a href="#">Ordinance 180034</a></p>	No	No	Yes (after it has been determined that the individual is otherwise qualified for the position and the applicant is interviewed)	The Ordinance does not apply if the employer is required to exclude applicants with criminal convictions due to a local, state or federal law or regulation.
<p><b>Los Angeles, CA (7/2017)</b></p> <p><b>Employers Covered:</b> Private employers with 10 or more employees and city contractors</p> <p><a href="#">Ordinance No. 184652</a></p>	Yes	Yes	No	Ordinance does not apply when the employer is <b>required by law</b> to obtain information regarding a conviction of an applicant; the applicant would be required to possess or use a firearm in the course of his or her employment; an individual who has been conviction of a crime is <b>prohibited by law from holding the position</b> sought by the applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated or judicially dismissed following probation; or an employer is <b>prohibited by law from hiring an applicant who has been convicted of a crime.</b>
<p><b>Montgomery County, MD</b></p> <p><b>Employers Covered:</b> Employers who have at least 15 full-time employees and do business in the County</p> <p><a href="#">Bill No. 36-14</a></p>	No	No	Yes (after conclusion of the first interview)	<p>The law prohibits employers from inquiring about arrests, accusations of crime, or criminal convictions in the application process until the conclusion of a first interview. The law does not apply to inquiries <b>expressly authorized</b> by federal, state, or county law or regulation.</p> <p><b>NOTE: Specific information pertaining to the disqualifying criminal history must be included in the pre-adverse and adverse notification letters.</b></p>
<p><b>New York City, NY</b></p> <p><b>Employers Covered:</b> Employers with at least four employees</p> <p><a href="#">Law Number: 2015/063</a></p>	Yes	Yes	No	<p>The Fair Chance Act does <b>not apply</b> to any criminal history inquiries or adverse actions taken by an employer pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history.</p> <p><b>NOTE: Specific information pertaining to the disqualifying criminal history must be included in the pre-adverse and adverse notification letters. A NYC Form Analysis must be included with the pre-adverse notification letter.</b></p>

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<p><b>Philadelphia, PA</b></p> <p><b>Employers Covered:</b> All employers</p> <p><a href="#">Amended Chapter 9-3500 of The Philadelphia Code – Fair Criminal Record Screening Standards</a></p>	<p>Yes (“conditional offer of employment” means an offer by an employer to hire an applicant, which may be withdrawn only if the employer subsequently determines that the applicant</p> <p>(i) has a conviction record which, based on an individualized assessment, would reasonably lead an employer to conclude that the applicant would pose an unacceptable risk in the position applied for; or</p> <p>(ii) does not meet other legal or physical requirements of the job)</p>	<p>Yes</p>	<p>No</p>	<p>The Ordinance’s restrictions <b>may not apply</b> when employers are mandated by state or federal law to consider certain criminal histories of applicants.</p> <p>However, even where such mandates exist, most employers will be able to comply with both Ban the Box and the state or federal law by waiting <b>until after the first interview</b> to make criminal history inquiries; <b>unless the state or federal law specifically requires that the inquiry be made on the employment application or during the first interview, employers are required to comply with Ban the Box.</b></p> <p><b>NOTE: Specific information pertaining to the disqualifying criminal history must be included in the pre-adverse and adverse notification letters.</b></p>

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<p><b>Portland, OR</b></p> <p><b>Employers Covered:</b> Employers with at least six employees</p> <p><a href="#">187795 Administrative Rules for Chapter 23.10</a></p>	<p>Yes (“conditional offer of employment” means any offer for a position that is conditioned <b>solely</b> on: The results of an employer’s inquiry into or gathering of information about a person’s arrest or conviction history; and/or some other contingency expressly communicated to the applicant at the time of the offer)</p>	<p>Yes</p>	<p>No</p>	<p>The Ordinance does <b>not apply</b> where a federal, state or local law or regulation requires or authorizes the consideration of a person’s criminal history, including but not limited to employees who are required to be licensed, registered, or certified by the State of Oregon.</p> <p><b>NOTE: Specific information pertaining to the disqualifying criminal history must be included in the adverse notification letter.</b></p>
<p><b>Prince George’s County, MD</b></p> <p><b>Employers Covered:</b> Employers who have at least 25 employees in the County</p> <p><a href="#">CB-78-2014</a></p>	<p>No</p>	<p>No</p>	<p>Yes (after conclusion of the first interview)</p>	<p>There is an <b>exception</b> for employers that are required to exclude applicants with certain criminal convictions from employment due to local, state or federal law or regulation.</p> <p><b>NOTE: Specific information pertaining to the disqualifying criminal history must be included in the pre-adverse and adverse notification letters.</b></p>
<p><b>Rochester, NY</b></p> <p><b>Employers Covered:</b> Private employers located within the City of Rochester with four or more employees and any City vendors, contractors or suppliers (including those located outside city limits)</p> <p><a href="#">Chapter 63, Article II Municipal Code</a></p>	<p>Yes (if the applicant will <b>not</b> be interviewed)</p>	<p>Yes (if the applicant will <b>not</b> be interviewed)</p>	<p>Yes (after an initial interview)</p>	<p>Employers are prohibited from asking prospective employees about their criminal conviction history during the application process and prior to the first interview. Employers <b>may</b> ask about convictions or violations if such convictions or violations would pose a bar to attaining employment under New York state or federal law.</p>

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<p><b>San Francisco, CA</b></p> <p><b>Employers Covered:</b> Private employers with at least five employees</p> <p><a href="#">Ordinance No. 54-18</a></p>	Yes	Yes	No	<p>Employers may only make criminal history inquiries after a conditional offer of employment. Where federal or state law imposes a criminal history requirement that conflicts with a requirement of the Fair Chance Ordinance, the federal or state law will apply. Allows for a private right of action.</p> <p><b>NOTE:</b> Specific information pertaining to the disqualifying criminal history must be included in the pre-adverse and adverse notification letters.</p>
<p><b>Seattle, WA</b></p> <p><b>Employers Covered:</b> Anyone who performs any services for an employer, when the physical location of such services is in at least substantial part (at least 50% of the time) within the City</p> <p><a href="#">Fair Chance Employment (Ordinance 124201, Council Bill 117796)</a></p>	No	No	Yes (after identification of qualified applicants)	<p>An employer may perform a criminal background check on a job applicant or require a job applicant to provide criminal history information, <b>but only after the employer has completed an initial screening of applications or resumes to eliminate unqualified applicants.</b></p> <p><b>NOTE:</b> Specific information pertaining to the disqualifying criminal history must be included in the pre-adverse and adverse notification letters.</p>
<p><b>Spokane, WA (6/2018; Fines imposed 1/1/2019)</b></p> <p>Includes temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency, whether offered with or without pay. Only applies to those applying for positions in the Spokane city limits.</p>	No	No	Yes; after the applicant has participated in an in-person or video interview or received a conditional offer of employment	<p>The Ordinance does not apply where criminal background checks are specifically permitted or required under state or federal law. The Ordinance also does not apply to any employer hiring an employee who will have unsupervised access to children under the age of 18, a vulnerable adult, or a vulnerable person.</p>

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<p><b>Westchester County, NY</b></p> <p><b>Employers Covered:</b> Employers with at least four employees</p> <p><a href="#">Fair Chance to Work</a></p> <p>Effective on or about March 3, 2019</p>	No	No	Yes [after completion of initial application]	<p>The law does not apply to applications for employment as a police officer, peace officer, or at a law enforcement agency, as statutorily defined and referenced in the law. <b>The law also does not apply to “any actions taken by an employer pursuant to any state, federal or County law that requires criminal background checks for employment purposes or bars employment based on criminal history.</b></p>

## Cities with Ban the Box Restrictions (Applicable ONLY to City Vendors)



Cities With Ban the Box Restrictions (Applicable <u>ONLY</u> to City Vendors)	Is a Conditional Offer Required to Inquire about Criminal History?	Is a Conditional Offer Required to Perform a Background Check?	Are Inquiries and/or Background Checks Permissible Prior to a Conditional Offer Being Made?	Preemption and/or Other Notable Nuance
<b>Boston, MA</b> <a href="#">CBC Chapter IV amended with appending CBC 4-7</a>	No	No	Yes (after identification of qualified applicants)	Vendors are expected to adhere to the practices of the City. The City of Boston does not conduct a background check on an applicant unless it is required by law or the City has made a good faith determination that the relevant position is of such sensitivity that a background check is warranted.
<b>Cambridge MA</b> <a href="#">Ordinance Number 1312</a>	No	No	Yes (after identification of qualified applicants)	Vendors are expected to adhere to the practices of the City.
<b>Compton, CA</b> <a href="#">Resolution 23293</a>	Yes	Yes	No	Vendors are expected to adhere to the practices of the City.
<b>Detroit, MI</b> <a href="#">CH 13, Article 1, Division 3, Sec 13-1-11 - 13-1-14</a>	No	No	Yes (after an applicant is interviewed or is found to be qualified for employment)	No
<b>Hartford ,CT</b> <a href="#">Article XIII, Section 2-785-2-793</a>	Yes	Yes	No	Vendors are expected to adhere to the practices of the City. The City of Hartford does not conduct a criminal record check on an Applicant unless such a check is required by state or federal law or the City has made a good faith determination that the relevant position is of such sensitivity that a criminal record check is warranted.
<b>Kalamazoo, MI</b> <a href="#">Background Information</a>	No	No	Yes (no criminal history inquiries are allowed on an employment application)	No

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<b>Louisville, KY</b> <a href="#">Ordinance 046, Series 2014</a>	No	No	Yes (after an applicant is found to be qualified for employment)	The City shall inquire about an applicant's conviction history before a conditional offer of employment if: a) Employment involves the transfer and handling of cash amounts in excess of \$500 or that involve major fiduciary responsibilities (e.g.- employees charged with investing City funds, accounting, auditing, etc.). b) Employment involves access to confidential information, including but not limited to, social security numbers, bank account information, credit card information, or other combination of information that could be used for identity theft or related criminal activity.
<b>Madison, WI</b> <a href="#">Sec. 39.08, Madison General Ordinances - Contractors</a>	Yes	Yes	No	No
<b>New Haven, CT</b> <a href="#">Ordinance</a>	Yes	Yes	No	Vendors are expected to adhere to the practices of the City.
<b>Pittsburgh, PA</b> <a href="#">Pittsburgh Code of Ordinances, Title One Administrative, Article XI, Personnel, Ch. 181</a>	No	No	Yes (no criminal history inquiries are allowed on an employment application)	Vendors are expected to adhere to the practices of the City.
<b>Richmond, CA</b> <a href="#">Ordinance No. 14-13 N. S.</a>	Yes	Yes	No	The Ordinance prohibits inquiry into an applicant's criminal history at any time unless a background investigation is required by state or federal law or the position has been defined as "sensitive."
<b>Sacramento, CA (1/2017)</b> <a href="#">Ordinance Adding Chapter 3.62 to, and amending Section 2.40.050 of the Sacramento City Code</a>	No	No	Yes (no criminal history inquiries are allowed on an employment application)	The Ordinance applies to contracts of \$100,000 and provides an exception for supply contracts and positions that are otherwise required by law to conduct criminal conviction history background checks.



## Cities with Ban the Box Restrictions (Applicable ONLY to City Vendors)



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<b>Syracuse, NY</b> <a href="#">Chapter 53 of Revised General Ordinances</a>	Yes	Yes	No	Vendors are expected to adhere to the practices of the City.
<b>Worcester, MA</b> <a href="#">City Ordinances § 37. Fair CORI Practices</a>	Yes	Yes	No	Vendors are expected to adhere to the practices of the City. The City of Worcester does not conduct a background check on an applicant unless it is required by law or the City has made a good faith determination that the relevant position is of such sensitivity that a background check is warranted.