

# MSF CLIENT ALERT

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## SUFFOLK COUNTY NEW YORK BANS THE BOX

*Beginning this summer, employers in Suffolk County, New York can no longer inquire about a job applicant's criminal conviction history prior to the beginning of employment.*

*June 17, 2020*

Suffolk County joins a handful of jurisdictions in New York that restrict employers from making pre-employment inquiries about an applicant's criminal conviction history<sup>1</sup>. The Fair Employment Screening Amendment (the "Amendment"), passed by the Suffolk County Legislature on March 17, 2020, goes into effect on August 25, 2020.

The Amendment prohibits Suffolk County employers with fifteen (15) or more employees from requiring an applicant to disclose or reveal any criminal conviction history during the application process. Employers may not ask about an applicant's prior criminal convictions on an application, before or during an initial interview, or at any time before the employee has submitted their application and had at least one interview.

The application process, for purposes of the Amendment, begins when the applicant first enquires about the position and ends when an employer has accepted an application for that position. If an employer offers employment without conducting an interview, the employer must inform the applicant whether a criminal background check will be conducted before employment is to begin.

This Amendment's restrictions will not apply if inquiries into criminal convictions are specifically authorized by other applicable law, or if the applicant is applying for certain positions including:

- The Suffolk County Police Department or the Suffolk County Department of Fire, Rescue, and Emergency Services;
- Any employer hiring for police officer and peace officer positions as defined by Criminal Procedure Law §§1.20 and 2.10;
- Any public or private school; or
- Any public or private service provider of direct services specific to the care or supervision of children, young adults, senior citizens, or the physically or mentally disabled.

Additionally, when an employer is hiring for a licensed trade or profession, including interns or apprentices for these positions, the employer may ask any question asked by the trade or professional licensing body in accordance with state law.

Violations of the law can result in civil action, and complaints may be filed in court or with the Suffolk County Human Rights Commission. Any person may file a complaint for violation of this law whether or not they are an aggrieved party.

### ***Comparing Suffolk County's Law to Other Local Laws Banning Such Inquiries***

Similar to Suffolk County, employers in Westchester County may not inquire about an applicant's conviction history until after the applicant has made an initial application in writing or otherwise. After an initial application,

<sup>1</sup> Other jurisdictions that have already restricted these types of pre-employment inquiries include New York City, Buffalo, Rochester, and Westchester County.

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a Westchester County employer may ask questions regarding the applicant's criminal history.

New York City's ban-the-box law is more extensive. The Fair Change Act makes it illegal for employers to ask applicants about their criminal history before the employer has offered employment. Employers may also not state that a background check is required on a job advertisement or application. Once a conditional offer of employment has been made, the employer may ask the applicant if they have a history of convictions. Employers may also ask the circumstances that led to any conviction, including the arrest leading to the conviction and original charges, at this stage. Employers are never permitted to ask about arrests that did not lead to convictions. If an employer decides to revoke an offer of employment, the employer is required to:

1. Give the applicant a copy of any background check or other documents used to determine that they had a criminal record;
2. Evaluate the applicant under New York State Law, and share that written evaluation with them; and
3. Hold the job open for at least three (3) business days so the applicant can respond.

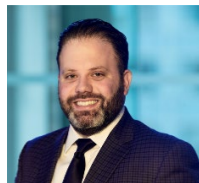
It is important to remember that New York State law prohibits denying employment simply because of a criminal record. The laws adopted in Suffolk County, Westchester County, and New York City supplement, not replace, the requirements of Article 23-A of the New York State Correction Law, and employers should be sure to comply with both state and applicable local laws.

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Please contact an attorney in MSF's Employment Group if you need assistance with respect to this information.



**Andrea B. Neuman**  
Partner | Chair, Employment  
212.655.3513 | abn@msf-law.com



**Gregg M. Kligman**  
Counsel | Employment  
(646) 273 8209 | gmk@msf-law.com



**Cassidy Mara**  
Associate | Employment  
(646) 273 8204 | cm@msf-law.com

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