

# Criminal background checks: Should you 'ban the box' on applications?

Retail giant Target grabbed HR headlines recently when it announced it was removing from its job applications any questions about applicants' criminal backgrounds.



The move was prompted when Minnesota—where Target is based—passed a law that forbids private employers in the state from asking criminal background check questions on job applications. Target decided to apply the policy at all its stores nationwide.

Minnesota is the 10th state to change its state law in response to a grassroots campaign called “Ban the Box,” joining California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, New Mexico and Rhode Island. Some states apply these laws only to public employers or government contractors. More than 50 cities have passed similar ban-the-box laws. The name refers to a check box that appears on many applications that asks people whether or not they’ve been convicted of a crime.

Employers covered under many ban-the-box laws cannot ask applicants about criminal convictions until the interview or even after they’ve made a conditional job offer. The belief is that ex-offenders will have a better chance at winning a job if they’re not eliminated in the application phase.

Most of these laws allow such questions to be asked on applications for “sensitive” jobs, such as those involving working with children.

Advocates say tougher sentencing laws—particularly for drug crimes—have driven the U.S. prison population up nearly fivefold between 1980 and 2011. Such laws, they say, will help reduce post-incarceration unemployment rates.

Opponents of such laws want to keep the “Criminal Record?” check box in place, saying removing it could endanger the safety of coworkers and the public.

**EEOC guidelines.** In late 2012, the EEOC published guidance that didn’t go as far as barring employers’ use of criminal background checks. Instead it urged employers to consider the seriousness of the offense, the amount of time that has passed and the relevance of the crime to the job being sought. It also clarifies that employers should never ask about applicants’ *arrest* records.

The EEOC is already acting on these guidelines. Last summer, it sued two large employers—BMW and Dollar General—saying the companies used criminal checks in ways that could disproportionately hurt black

applicants.

**Online resource** Read more about (and find a link to) the EEOC's guidance on criminal background checks at [www.theHRSpecialist.com/eeocbackground](http://www.theHRSpecialist.com/eeocbackground).