

CLIENT ALERT

Federal Fair Chance Act to Limit Federal Contractors' Inquiry Into Criminal History of Job Seekers

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In the final weeks of 2019, as part of the National Defense Authorization Act (the NDAA), the government enacted the “Fair Chance to Compete for Jobs Act of 2019” (the “Fair Chance Act”), prohibiting federal agencies and federal contractors from requesting criminal background information regarding job applicants prior to extending a conditional job offer, with certain exceptions. The Fair Chance Act was a bipartisan initiative, and is in-step with more than a dozen states and localities that have enacted similar “ban-the-box” laws in recent years.

Beginning December 31, 2021, Federal contractors—as a condition of receiving Federal contracts—may not request information relating to criminal history, verbally or in writing, for positions “related to work under [the] contract.” The law provides exceptions where (1) consideration of criminal history is required by law; (2) the position at issue would have access to classified information, or have sensitive law enforcement or national security duties; or (3) the position is identified as excepted by the Administrator of General Services (or, in the case of defense contracts, by the Secretary of Defense). With respect the third carve-out, the law further instructs the Administrator of General Services and the Secretary of Defense to, in consultation with each other, identify additional positions by April 2021 that will be excepted from the ban, taking into account jobs that “involve interaction with minors, access to sensitive information, or managing financial transactions.”

The Fair Chance Act further directs the Administrator of General Services (for civilian agency contracts) and the Secretary of Defense (for defense contracts) to publish complaint procedures for job applicants and dictates progressive penalties for violation, up to and including suspension of payment for a repeated offense.

While the ban does not take effect for almost two years, federal contractors should take this opportunity to review their hiring practices and onboarding materials now to ascertain steps they will need to take to ensure timely compliance. This is particularly true for multi-state contractors, who should already be mindful of state and local ban-the-box laws that may already apply in the jurisdictions in which those contractors operate. Moreover, employers who perform work in the federal contracting and commercial spaces should consider whether to implement a single policy that complies with all applicable federal, state and local “ban-the-box” laws, or whether to implement different policies depending on the jurisdiction and the type of work the applicant will perform.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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