



Portland, Oregon “Ban the Box” FAQs

[Ordinance No. 187459](#) (and [Administrative Rules](#))

1. Who does the law apply to?

Any employer with six or more employees who perform a majority of their work within the City of Portland (including full-time, part-time, temporary, or seasonal workers).

2. What is the effective date?

July 1, 2016.

3. When is it permissible to ask an applicant about criminal records?

After a conditional offer of employment is made.

4. Does the law affect when you can conduct a background check?

Yes. Employers may not conduct criminal background checks until after a conditional offer of employment.

5. Are there any “pre-adverse” notification requirements beyond those of the FCRA?

No.

6. Are there any “adverse action” notification requirements beyond those of the FCRA?

If after consideration, an employer chooses to rescind a conditional offer, it is required to promptly notify the applicant in writing and identify the relevant criminal convictions on which

the decision is based. This may be as simple as including a print out of the background check, with the relevant convictions highlighted.

7. Are there any other additional notice/disclosure requirements?

No.

8. Does the law impose any additional restrictions or requirements on employers?

Yes. In making the determination of whether an applicant’s criminal history is job related for the position in question and consistent with business necessity, an employer must conduct an individualized assessment of:

1. The nature and gravity of the criminal offense;
2. The time that has elapsed since the criminal offense took place; and
3. The nature of the Employment held or sought.

This ordinance prohibits employers from considering the following information:

1. An arrest not leading to a conviction, except where a crime is unresolved or charges are pending;



2. Convictions that have been judicially voided or expunged; or
3. Charges not involving physical harm or attempted physical harm that have been resolved through the completion of a diversion or deferral of judgment program.

9. Does the law allow employment applications to still include the criminal history question with a carve-out for this jurisdiction?

The law makes no mention of whether or not this practice is permitted.

10. Does the law provide any exceptions?

The ordinance provides for several exempt categories of employers:

1. If the employer has fewer than six employees;
2. If federal, state or local law, including corresponding rules and regulations, requires the consideration of an applicant's criminal history;
3. If the employer is a law enforcement agency, in the criminal justice system or seeking a nonemployee volunteer.

For the following positions, an employer may consider an applicant's criminal history at any point in the hiring process, and may use the [City Criminal History Matrix](#) provided by administrative rule to screen applicants, but must nonetheless comply with all other requirements of this [Chapter 23.10](#). An individualized assessment shall be required for any criminal convictions not contained on the City Criminal History Matrix.

1. Positions involving direct access to or the provision of services to children, the elderly, persons with disabilities, persons with a mental illness, or individuals with alcohol or drug dependence or substance abuse disorders;
2. Positions which have been determined by administrative rule to present heightened public safety concerns or a business necessity;
3. Positions designated by the Employer as part of a federal, state or local government program designed to encourage the employment of those with criminal histories.

11. Does the law supersede or preempt any other law?

No.