



# Philadelphia “Ban the Box” FAQs

[Bill No. 150815](#)

## 1. Who does the law apply to?

Any private employer within the City of Philadelphia.

## 2. What is the effective date?

March 14, 2016.

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

Employers may ask about criminal records only after they make a conditional offer of employment (defined as an offer that can be withdrawn only if the employer subsequently determines in accordance with the law “that the applicant would pose an unacceptable risk in the position applied for” or that he or she “does not meet other legal or physical requirements of the job.”).

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

Yes. Employers may only conduct background checks after making a conditional offer of employment. Employers may not ask any questions regarding the applicant’s willingness to submit to a background check until after a conditional offer is made. An employer may give notice to prospective applicants or during the application process of its intent to conduct a criminal background check after any conditional offer is made, provided that such notice shall be concise, accurate, made in good faith and shall state that any consideration of the background check will be tailored to the requirements of the job.

## 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?

Yes. The amended Ordinance includes a notice provision similar to Pennsylvania state law (see 18 Pa. C.S. § 9125(c)). Should an employer reject an applicant based in whole or in part on criminal record information, the employer must provide the applicant written notice of its decision and the fact that it was based on the applicant’s criminal history. The employer must also provide the applicant with a copy of the criminal history report that affected the employer’s decision, and “allow the applicant 10 business days to provide evidence of the inaccuracy of the information or to provide an explanation.” This requirement is separate from and in addition to the Fair Credit Reporting Act’s adverse action notice requirement.

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

Yes. The Ordinance includes an additional requirement that any employer subject to the Ordinance post a summary of its requirements, in a form to be supplied by the Philadelphia Commission on Human Rights, in a conspicuous place on the employer’s website and premises, where applicants and employees will be most likely to notice and read it.



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

Yes. Once it becomes lawful for employers to consider criminal history, they may only consider convictions that occurred less than seven years from the date of the inquiry. An additional caveat: “[a]ny period of incarceration shall not be included in the calculation of the seven year period.”

Further, employers cannot maintain a policy of automatically excluding any applicant with a criminal conviction from a job or class of jobs. The amended Ordinance sets forth specific factors an employer must evaluate if it takes an applicant’s criminal history into consideration during the hiring process. The employer’s “individualized assessment of the risk presented” must include consideration of:

1. The nature of the offense;
2. The time that has passed since the offense;
3. The applicant’s employment history before and after the offense and any period of incarceration;
4. The particular duties of the job being sought;
5. Any character or employment references provided by the applicant; and
6. Any evidence of the applicant’s rehabilitation since the conviction.

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

No. The Ordinance explicitly states that multi-state applications may not include the criminal history question with an instruction for Philadelphia applicants not to answer.

#### **10. Does the law provide any exceptions?**

Yes. The Ordinance does not apply if the inquiries or adverse actions prohibited by it are specifically authorized or mandated by any other applicable law or regulation.

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

No, the Ordinance simply amends Philadelphia’s existing “Ban the Box” law.