

Effective September 15, 2020

HAWAII AMENDS BAN THE BOX TO FURTHER RESTRICT CONSIDERATION OF CRIMINAL HISTORY

https://www.capitol.hawaii.gov/session2020/Bills/GM1156_.pdf

KEY PROVISIONS OF THE LAW

Senate Bill 2193 expands Hawaii's Ban the Box law to prevent most private sector employers from considering criminal records older than seven years for felony convictions and to prevent the consideration of misdemeanor convictions older than five years, excluding periods of incarceration.

The law is intended "to reduce unnecessary employment discrimination against individuals with old and relatively minor conviction records, in furtherance of economic self-sufficiency, and to reduce crime and recidivism rates."

EXCEPTIONS

The prohibition does not apply to employers who are permitted by federal or state law to inquire into an individual's criminal history for employment purposes, including, but not limited to:

- The department of education pursuant to section 16 302A-601.5; 17
- The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing 20 non-witnessed direct mental health services pursuant 21 to section 321-171.5
- Providers of a developmental disabilities domiciliary home pursuant to section 321-15.2
- Private schools pursuant to sections 302C-1 and 378-3 (8)
- Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9)
- The department of human services pursuant to sections 4 346-97 and 352-5.5

RECOMMENDED ACTIONS IN PREPARATION FOR SEPTEMBER 15, 2020

Employers with operations in Hawaii should take steps to ensure compliance, including:

- Review and update of post-offer, pre-employment questionnaires that ask job applicants to disclose prior felony or misdemeanor convictions.
- Review and update of policies and procedures to reflect the appropriate lookback period for consideration of felony or misdemeanor convictions.
- Updates training for personnel involved in the hiring process, particularly those tasked with adjudicating criminal background checks.

NOTE: This information is offered as general direction and in no way should be construed or accepted as legal advice. Each individual employer may have particular regulatory and other requirements which may alter this general direction. Furthermore, each individual position may have unique duties, responsibilities, and characteristics which may influence this general direction.