
Seizing the “Ban the Box” Momentum to Advance a New Generation of Fair Chance Hiring Reforms

By: National Employment Law Project
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The “ban the box” movement has captured the imagination of criminal justice reformers from grassroots organizers to faith-based leaders, and elected officials across the political spectrum. By reducing bias in the hiring process, fair chance hiring reforms embody the fundamental shift in policy that is taking hold around the nation in response to the collateral damage caused by decades of over-criminalization and mass incarceration.

After several exceptional years of state and local organizing successes, the movement recently received another major boost when it was embraced by President Barack Obama’s “My Brother’s Keeper” initiative. The President’s Task Force [90-day progress report](#), which lays out a comprehensive plan to address the racial and economic inequities that plague boys and young men of color, recommends “implement[ing] reforms to promote successful reentry, including hiring practices, such as ‘Ban the Box,’ which give applicants a fair chance and allows employers the opportunity to judge individual job candidates on their merits as they reenter the workforce.”

Fair chance hiring policies are positioned like never before to change minds and open up job opportunities for the millions of people who have been unfairly locked out of the job market. With this paper, we hope to build on this momentum by providing organizers and advocates with a brief look back at the successes to date and the lessons learned, while also profiling promising reforms that leverage ban the box to create new job opportunities for people with arrest and conviction histories.¹

¹ There are many ways that people who face employment discrimination may interact with the criminal justice system including, but not limited to, convictions, non-conviction arrests, juvenile adjudications and infractions, and border detentions.

The Basics of “Ban the Box” and Fair Chance Hiring

There are an estimated 70 million U.S. adults with arrests or convictions that make it difficult, if not impossible, to find work given the proliferation of employment background checks. Indeed, according to a [landmark study](#), the likelihood of a callback for an interview for an entry-level position drops off by 50 percent for those applicants with an arrest or conviction history. This scarlet letter has taken an especially heavy toll on communities of color that have been ravaged by the “war on drugs” and hardest hit by unemployment. In fact, African-Americans job applicants without an arrest or conviction history were less likely to get a call back than white job applicants with similar histories.

As the President’s Task Force report states, the idea behind ban the box is simple – it gives “applicants a fair chance and allows employers the opportunity to judge individual job candidates on their merits . . .” Ban the box is about creating a fairer process that allows the individual an opportunity to compete for a job and to be considered first based on job-related qualifications in order to limit the stigma so often associated with a conviction or arrest history. To be clear, the policies still allow employers to conduct a background check. However, the employers delay the inquiry until later in the hiring process, either after the interview or a conditional offer of employment. The most effective fair chance hiring policies not only remove the conviction and arrest history questions from the application, they also ensure that employers take into account other important factors when considering an applicant’s conviction history, including the age of the offense, the relationship of the individual’s record to the job duties and responsibilities, and evidence of rehabilitation.

The research clearly establishes that employment of people with a conviction or arrest history not only reduces the high rates of recidivism that plague many communities, but it also goes a long way to help unite families and allow parents to maintain child support. However, the question inevitably arises, is ban the box the solution? What’s the proof it actually helps people with arrest and conviction records find work? It’s tough to measure the effectiveness of the policy, partly because it’s so difficult for the unemployed to find work in today’s economy. Plus, most of the states and cities were not collecting data prior to enacting these policies, so it is challenging to measure the specific impact.

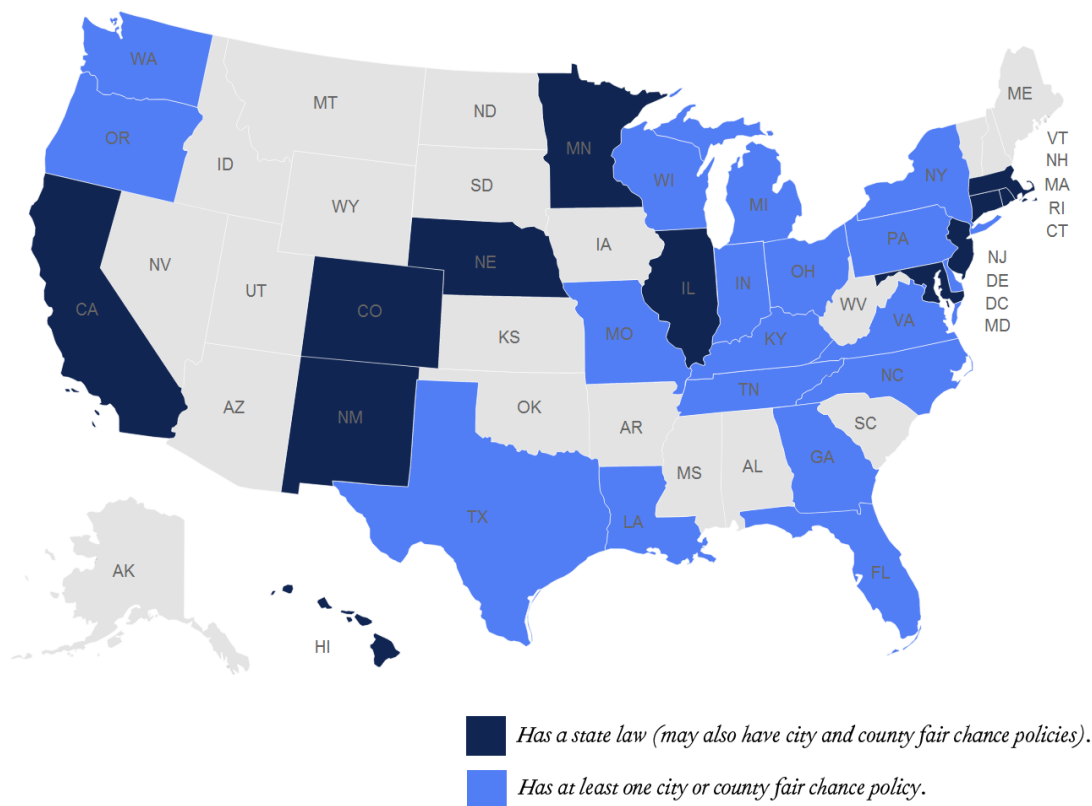
That said, where the data do exist – in Atlanta, Durham, and Minneapolis – there’s an unmistakable impact on employer hiring practices benefiting people with arrest and conviction histories. In Minneapolis, city officials found that removing the conviction or arrest history check-box from initial applications and postponing background checks until after a conditional offer of employment resulted in more than half of applicants with a conviction being hired. In Durham, since the fair hiring policy was adopted, the hiring rate of people with arrest and conviction histories by the City quadrupled and by the County, the number of people hired nearly tripled. And in Atlanta, city officials found that their fair hiring policy resulted in people with a conviction or arrest history making up 10 percent of City hires between March and October of 2013.

The Momentum behind Fair Chance Hiring Initiatives

More than any other single employment issue, states and cities have embraced ban the box and the strong message that it sends of the need to remove the debilitating stigma of an arrest or conviction history from the initial hiring process.

The History and Latest Developments

The movement – and the expression “ban the box” – was the brainchild of the San Francisco-based organizing group, All Of Us Or None (AOUON), which is a membership organization of formerly incarcerated people that has chapters around California and the United States. In 2005, AOUON successfully organized the Board of Supervisors of the City and County of San Francisco to adopt a resolution calling on the city and county to ban the box in public sector job applications. In 2006, a wave of major cities followed suit and adopted fair chance hiring policies, including Boston, Chicago, St. Paul and Minneapolis. And now, less than 10 years later, there are 13 states, nearly 70 cities and counties, and several major corporations that have adopted ban the box policies.



Last year (2013) was a banner year for fair chance hiring reform: California, Illinois, Maryland, Minnesota, and Rhode Island adopted new policies, along with several major cities (Atlanta, Tampa, Richmond, Kansas City, Missouri, and Buffalo, among others). And *Target Corporation*

publically announced its national policy as a result of an extended organizing campaign of Take Action Minnesota. And thus far in 2014, four states passed new fair chance hiring laws (Nebraska, Delaware, New Jersey and Illinois, which expanded its policy to include private employers), along with several major cities (Baltimore, Charlotte, Indianapolis, Louisville, New Orleans, Rochester, Washington, D.C., and more). Another large retailer – *Bed Bath & Beyond* – also adopted the policy nationwide. In total, about one-third of the U.S. population lives in a community where fair chance hiring is in effect.

The Major Milestones

Tracing the movement’s evolution over the past decade, several major milestones are important to emphasize. First, in 2010, Massachusetts implemented statewide legislation extending ban the box not just to public sector employers, but to the state’s private employers as well. While Hawaii was the first state to legislate a fair chance hiring law in 1998 (and the only state with a law on the books until 2009), Massachusetts was the first state on the mainland to extend the policy to private employers, followed by Minnesota, Rhode Island, Illinois and most recently New Jersey (i.e., six of the 13 ban the box states). Several major cities (including Baltimore, Buffalo, Newark, Philadelphia, Seattle, Rochester, and San Francisco) have done so as well, thus creating substantial precedent to build on to advance this key feature of fair chance policies.

Second, in April 2012, the U.S. Equal Employment Opportunity Commission (EEOC) endorsed ban the box for employers to comply with the federal anti-discrimination law that regulates employment background checks. The EEOC’s bi-partisan [guidance](#) on background checks states, “As a best practice, and consistent with applicable laws, the Commission recommends that employers do not ask about convictions on job applications . . .” The announcements of several of the nation’s largest retailers, including *Walmart*, *Target*, and most recently *Bed Bath & Beyond*, were also major milestones for the movement. Combined with the EEOC’s endorsement, these corporate policies lend substantial weight and credibility to new campaigns to cover private employers in other states and cities around the country.

Finally, the movement is taking hold in a growing number of politically conservative states where criminal justice reform has risen to the forefront of the policy agenda. For example, this year the city councils of Louisville and Indianapolis, both with substantial Republican representation, passed ban the box policies by nearly unanimous votes (covering both the public sector and government contractors). In 2014, Nebraska also became the first solid red state to remove conviction questions from public employment applications. And Georgia’s Republican Governor, Nathan Deal, pledged to sign a fair chance hiring executive order. The governor’s spokesperson told the press, “The governor will implement ban the box on the state level, and hope that the private sector follows suit. This will afford those with blemishes on their record a shot at a good job, which is key to preventing a return to crime.”

Lessons Learned from Fair Chance Hiring Campaigns

Organizers and advocates seeking to launch a new ban the box initiative, or expand on a prior policy, are in a better position now than ever before to build a vibrant campaign and forge a

strong policy. Some of the continued challenges and lessons learned, described below, may prove helpful to factor into the campaigns.

- a. It is often helpful to start locally and establish a strong and proven policy in key cities and counties before taking on state legislation. Indeed, most of the state laws were passed after strong local campaigns paved the way (e.g., in California, Connecticut, Illinois, Massachusetts, Minnesota, Rhode Island). This is especially true in more politically conservative states, like Georgia, Florida, Indiana, Michigan, North Carolina, Texas, and Wisconsin, where there are local campaigns that can help lay the groundwork a statewide initiative.
- b. Keep building toward stronger policies that incorporate coverage of private sector employers, aggressive enforcement mechanisms and other key provisions. For example, in Minnesota and Illinois, as well as Seattle and San Francisco, advocates laid the groundwork for private sector coverage after first winning campaigns covering the public sector workforce.
- c. When seeking to extend fair chance hiring laws to the private sector, consider reaching out early to the employer community to limit or avoid potential opposition. For example, in San Francisco, the advocates worked with the San Francisco Chamber of Commerce, which played a constructive role in the new ordinance that now covers private sector employers. Individual voices from the business community, like *Target*, have played a constructive and supportive role in state and local initiatives as well.
- d. Fair chance hiring initiatives resonate strongly with a broad array of interest groups, thus creating a special opportunity to forge a powerful coalition, including people with arrest and conviction histories, the faith-based community, grassroots organizing groups, unions, civil rights organizations, progressive law enforcement officials, and increasingly conservative organizations that have embraced criminal justice reform.
- e. Enforcement of fair chance hiring policies remains a challenge in many states, cities and counties. Thus, stronger standards of accountability are required (e.g., targeted audits by government officials and regular reporting of data by employers), as well as an effective complaint process, investigative procedures for a government enforcement entity to follow, and meaningful penalties to hold employers accountable where necessary.

A New Generation of Fair Chance Hiring Reforms

The exceptional advancements of the past several years make clear the potential of fair chance hiring campaigns to help shape broader job creation policies that improve the employment prospects of people with arrest and conviction histories. In particular, ban the box polices can be coupled with “local hiring” (or “first source hiring”) initiatives that help target employment in government subsidized development projects to local community residents.

In several communities, including Los Angeles, Portland and Oakland, agreements have been forged with employers on government subsidized projects to target “disadvantaged workers,” which has been defined to include anyone who has a “criminal record” or other involvement with the criminal justice system.” These requirements are most effective when there is a set

percentage of work hours devoted to targeted beneficiaries, as well as strong reporting, penalties for non-compliance and clear pipelines for training and job referrals.

In Oakland, an especially comprehensive “community benefit agreement” was established for an \$800 million warehousing and goods movement redevelopment project at the Oakland Army Base, which is projected to create 2,800 construction jobs and 2,000 operations jobs. The agreement required 30% of workers to be Oakland residents, and 25% of them must be “disadvantaged” Oakland residents, including people with convictions. The agreement also requires employers and subcontractors to delay conviction history inquiries and limits background checks to those positions where they are required by a government entity or other special circumstances.

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Fair Chance and Targeted Hiring Resources: There are a number of valuable resources to help organizers and advocates launch state and local fair chance hiring campaigns. The National Employment Law Project (NELP) has developed a website (www.nelp.org/banthebox) that features a comprehensive Fair Chance-Ban the Box toolkit. The toolkit includes an array of campaign material, including the [Fair Chance Factsheet](#), [Best Practices and Model Policies](#), [Research Summary](#), [City and County Guide](#), the latest [State Guide](#), helpful press clips, and [other resources](#). All of Us or None/Legal Services for Prisoners with Children has also assembled an on-line Ban the Box Campaign Toolkit (available [here](#)), which provides best practices, campaign literature and other helpful resources. For more background on targeted hiring initiatives, including model language incorporating fair chance hiring protections, see the resources developed by the Partnership for Working Families and NELP ([Community Hiring Model Language](#)).