

DOES “BAN THE BOX” HELP OR HARM? IT REALLY JUST DEPENDS ON HOW YOU REACT.

We've written a few pieces on background checks over the years—the complex turnaround times, rulings and regulations, and their general lack of efficacy in crafting a “better” workforce—but there's another growing consideration: the “ban the box” movement, be it through legislation or individual company policy. Proponents sing its praises for helping reduce recidivism by giving convicted criminals a better shot at employment; opponents claim it a governmental overreach that threatens the safety of the workplace. The debate typically centers on the idea of a clear winner and a clear loser, but we think it can be a win-win.

Today's labor market is tight—finding and retaining workers is *hard*—and we firmly believe hiring speed and inclusive work atmospheres set successful firms apart. Consider this: Over 600,000 people exit prison each year, and many try to find a job. Second-chance workers have higher unemployment rates (one estimate puts it over 25%!¹), so they can be more easily and quickly acquired than other workers; and, studies show turnover is lower among unscreened workers² and convicted criminals³, meaning costly and time-consuming background checks don't guarantee a higher-performing workforce. For these reasons and others, we support the underlying objectives of the “ban the box” movement *and* a thoughtful reduction in background check policies.

BANNING THE BOX HELPS BETTER ALIGN YOU WITH THE EEOC'S PRO-WORKER RULINGS

Let's clear one thing up: Removal of “the box” off a job application doesn't mean background checks *can't* be part of your hiring process; it simply changes the point in the hiring process at which a criminal conviction may be revealed, if you choose to seek it out. So whether you're required to make the change or you opt to do it on your own, rest assured that removing “the box” isn't automatically threatening the safety of your workforce; in fact, it is offering a legal safety net.

In recent years, the Equal Employment Opportunity Commission (EEOC) has taken a very pro-worker stance regarding criminal history policies and procedures and the effect they have on protected classes of workers. Banning the box aligns well with EEOC expectations because it naturally encourages employers that continue to use criminal history to make hiring decisions to do three things: 1) By law or company policy, wait until a specific point in the hiring process before seeking information about criminal history; in most scenarios, this is during the interview or after a conditional job offer; 2) By policy, outline which jobs warrant background checks and what results are unacceptable for a given job; and 3) Assess each candidate against the policy by looking at the type of conviction, the date of the conviction, and the job applicant's history since the conviction. While we recognize that having “the box” on a job application doesn't automatically mean you disqualify every candidate by *policy*, we know that seeing a checked box can influence a hiring manager's willingness to engage a candidate further in the hiring process, which can have a disparate impact on protected workers and will be hard to argue when the EEOC comes calling.

EVEN IF YOU SUPPORT THE BAN, YOU MIGHT NOT BE AS WOKE AS YOU THINK

It's important to note there are two studies floating around that call into question the *guaranteed* efficacy of the “ban the box” movement (and, by proxy, the efficacy of eliminating all additional background screenings). In summary, researchers from top-tier universities studied employment data among various groups of workers inside and outside “ban the box” jurisdictions and across census regions, and they found that workers in protected classes (namely young, black or Hispanic males) had higher rejection and unemployment rates in areas after implementation of “ban the box” policies. Why? *Hiring manager bias*. The research showed poor outcomes in the three census regions where hiring managers had access to more white applicants; however, the outcome was different in the South, where black workers make up a substantial proportion of the talent pool. The researchers concluded that—absent a clear indication of criminal history on the application—hiring managers were apt to usher white applicants through the hiring process in greater numbers, due to the belief they are more likely to have clean backgrounds. The policy itself didn't fail; hiring managers failed the policy.

¹ Couloute, Lucius, and Dan Kopf. “Out of Prison & Out of Work.” States of Incarceration: The Global Context 2016 | Prison Policy Initiative, Prison Policy Initiative, July 2018, www.prisonpolicy.org/reports/outofwork.html.

² “What Are You Getting Out of a Background Check: Peace of Mind or Performance?” Elwood Staffing Business Resource Center, Elwood Staffing, www.elwoodstaffing.com/whitepapers/Elwood-Staffing-White-Paper_What-are-You-Getting-Out-of-a-Background-Check.pdf.

³ Kwok, Roberta. “Should You Hire Someone with a Criminal Record?” Kellogg Insight, 3 Feb. 2017, insight.kellogg.northwestern.edu/article/should-you-hire-someone-with-a-criminal-record.

DOES “BAN THE BOX” HELP OR HARM? IT REALLY JUST DEPENDS ON HOW YOU REACT.

BAN THE BOX ... AND BIASES

Given today's tight labor market, our litigious society, a pro-worker legislative and regulatory environment, and the fact that bias will be present in all scenarios, we think the best business decision is this: Ban the box on your job application, focus on the pros of a second-chance workforce and reassess which (if any) positions require background checks and why, and dedicate some hours to making hiring managers more aware of other biases, like the way names and addresses might affect their view of a candidate.

READ OUR OTHER WHITE PAPERS ABOUT BACKGROUND CHECKS AT WWW.ELWOODTHINKS.COM

This document was researched, analyzed, written, and prepared by Elwood Staffing®, one of the largest light industrial staffing firms in the United States. Since its founding in 1980, Elwood has attracted millions of candidates, made hundreds of thousands of placements, and served tens of thousands of clients. Each and every day, our interactions with job seekers, workers, and employers generate valuable data we continually develop into actionable insights that guide better business decisions. We love data, and we love to share our knowledge to help employers like you make informed decisions. We are committed to finding new and consistent ways of sharing the valuable insights we gain, and we hope you look to us as an advisor with the knowledge and capabilities to help you get ahead.

View more of our publications at www.elwoodstaffing.com/BRC

This publication is proprietary and confidential and intended for general purposes. Nothing contained, expressed, or implied herein is intended or shall be construed as legal advice, and no attorney-client relationship is formed. If you have questions about any law, statute, regulation, or requirement expressly or implicitly referenced, contact legal counsel of your choice.

