

Legal Notes: May 2015

“Ban the Box” A new movement is growing among private and governmental employers to “ban the box.” What box? And why do they want to ban it?

The box is commonly found on employment applications. Prospective employees need to check whether they have been convicted of a crime. Unfortunately, any applicant who checks the box is unlikely to be invited for a job interview. Human resource managers have dozens, if not hundreds, of applications to sift through and a criminal conviction may be an easy way to winnow down those applications.

This movement is not only being adopted by the usual suspects but unusual ones as well. Koch Industries announced in April that it would no longer ask for criminal conviction information in the hiring process. Target dropped the practice in 2013. States are also getting on board with Virginia also declaring in April that it would no longer ask for criminal conviction history in its applications.

These actions, by persons such as the Koch brothers, are part of a larger movement joining conservatives and progressives to reform the criminal justice system. Concepts such as redemption, rehabilitation and second chances are being put forward. As the Koch representative said: "Do we want to be judged for the rest of our life for something that happened on our worst day?"

Wisconsin has long allowed employers to ask about criminal convictions in an application. Many states (and the federal government) do not prohibit discrimination based on an arrest or conviction record. However, Wisconsin is one of the few jurisdictions that prohibit employers from using that information to deny employment. An employer can turn down an employee only if the past criminal conviction is substantially related to that job. For example, a person convicted of embezzlement may be turned down for work as an accountant in a bank. On the other hand, a person convicted of disorderly conduct may be eligible for that same job.

Banning the box and the related movement to reform the criminal justice system represents a major move from the 1990's when three strikes and mandatory minimum sentencing, as well as resultant boom in jail and prison construction, were the predominant sentiment.