

## New Mexico Passes Ban-the-Box and Expungement Laws

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On April 3, 2019, New Mexico governor Michelle Lujan Grisham signed into law two bills related to criminal background checks that may affect employers operating in the state. The first is a ban-the-box law that prohibits private employers from inquiring about an applicant's criminal history on an employment application. The second allows certain individuals to petition the court for expungement of criminal records.

### Ban-the-Box Law

New Mexico Senate Bill 96 amends the state's "[Criminal Offender Employment Act](#)." The amendment expands the state's ban-the-box law to private employers. The new law, which will go into effect on June 14, 2019, prohibits private employers with four or more employees from inquiring about an applicant's criminal history on a written or electronic employment application. Employers may consider the applicant's conviction information after review of the employment application and upon discussion of employment with the applicant. Practically speaking, the new law requires employers to wait until after an interview or interview-like discussion has

taken place with an applicant to inquire about the applicant's criminal history. The law does not prohibit employers from notifying applicants that a particular law or the employer's policy could disqualify an applicant with certain criminal history from employment in particular positions.

New Mexico joins 11 other states—[California](#), Connecticut, Hawaii, [Illinois](#), [Massachusetts](#), Minnesota, [New Jersey](#), Oregon, [Rhode Island](#), [Vermont](#), and Washington—and the District of Columbia in passing ban-the-box laws for private employers.

## **Expungement Law**

New Mexico also enacted a new expungement statute, the "[Criminal Record Expungement Act](#)," which allows individuals with certain arrest and convictions records to petition the court for expungement. Most individuals that are successful in getting arrest and conviction records expunged can take the position that the underlying arrest or conviction did not occur and, therefore, will not be required to disclose such information to an employer on an employment application or at any time throughout the employment relationship. This new expungement law will go into effect on January 1, 2020.

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