



Interpretive Notice & Formal Opinion (“INFO”) # 8: Colorado Chance to Compete Act (also known as “Ban the Box”)

Overview

This INFO addresses employee and employer rights and responsibilities under the “Colorado Chance to Compete Act” (“CTC,” [HB 19-1025](#), C.R.S. § 8-2-130), which took effect September 1, 2019, making Colorado the 13th state at the time to enact private sector “ban the box” legislation -- a ban on what is often a check-box on a job application requiring applicants to disclose any criminal record.

As stated in the legislative declaration, CTC was enacted to provide people with criminal records a more meaningful chance to compete for a job, and thereby provide for themselves and their families while also supporting Colorado’s workforce and economy. At the same time, CTC is also protecting employers’ ability to make whatever hiring decision they deem appropriate, by not requiring employers to hire candidates with criminal records -- only to give them a chance to compete, by letting them apply for jobs without being screened out for having a criminal record.

Covered Employers

CTC broadly defines “employer” as a person (including a business entity) regularly engaging the services of individuals to perform services of any nature, including an employer’s agent, representative, or designee, as well as employment agencies. It does not include government agencies, quasi-governmental entities, or political subdivisions of the state.

Employers of all sizes are covered by CTC, except that until September 1, 2021, employers with 10 or fewer employees (regardless of their worksites) are exempt from CTC.

Prohibited Practices

CTC prohibits employers from:

- (1) Stating in a job application or advertisement that a person with a criminal history may not apply;
- (2) Asking about an applicant’s criminal history on an initial job application; or
- (3) Requiring the applicant to report their criminal history on an initial job application.

The prohibitions apply to all forms of job applications or advertisements, including those posted or transmitted electronically.

Employee Complaints and Employer Responses

The Division of Labor Standards and Statistics accepts CTC complaints, including anonymous complaints, from any person who has witnessed, suffered from, or been injured by a perceived violation.

A potential applicant who witnesses a job posting and decides not to apply may file a complaint. To file a complaint, use the complaint form on the Division’s [Chance to Compete webpage](#).

If an employer receives a Notice of Complaint from the Division, they should review it carefully, and respond with the requested documentation, and call the assigned investigator if they have any questions.

Employer Recordkeeping Requirements

Rule 3.1 of the [Colorado Chance to Compete Act Rules](#) requires employers to maintain copies of any and all written applications, electronic applications, or job advertisements that include any question, inquiry, or request as to any aspect of a “criminal history” as defined by C.R.S. § 8-2-130. Employers must maintain these documents for a period of 18 months after they post the job application, or throughout a Division investigation (once notified), whichever is longer.

Exceptions to CTC Requirements

CTC requirements do not apply to a job position being offered or advertised if:

- (1) Federal, state, or local laws or regulations prohibit employing a person with a “specific criminal history” for the particular position;
- (2) The employer is participating in a federal, state, or local government program to encourage the employment of people with criminal histories; or
- (3) Federal, state, or local law or regulations require the employer to conduct a criminal history record check for the particular position.

If exception (1) or (3) applies, the job advertisement must be reasonably specific as to what criminal records, if any, will disqualify an applicant.

Example: Employers employing truck drivers may have to follow applicable laws prohibiting the hiring of someone found guilty of driving under the influence of drugs or alcohol, but the employer’s job posting may not broadly state “no felonies” in order to qualify for the exception. Instead, the employer’s job posting must reasonably specify what offenses will disqualify an applicant.

Specific Practices Prohibited by CTC

Contracts between an employer and a business customer that prohibit the employer from hiring workers with criminal histories are not exceptions to CTC. A contract is not a law or regulation, and cannot allow a practice prohibited by a law or regulation.

Job postings that do not expressly prohibit an application, but that say an applicant “must pass a background check” or have “no prior felonies,” are not exceptions to CTC. However, employers still can (A) inform potential applicants that a background check may be conducted upon a conditional offer of employment, with the specific criteria and factors that would be used in making a hiring decision, and (B) obtain publicly available criminal background reports on applicants at any time.

Violations

Employers who have violated CTC are subject to the following consequences.

- **1st Violation of CTC by an Employer:** The Division issues the employer an order and warning to bring the offending application, advertisement, or other document or practice into compliance, and to produce evidence of their compliance to the Division within 30 days.
- **2nd Violation:** The Division issues the same types of orders as for a first violation, with potential additional orders tailored to the problem of the repeated violation of CTC, and also imposes a fine of up to \$1,000 per violation.
- **3rd or Subsequent Violation:** The Division issues the same types of orders as for a second violation, and also imposes a fine to the Division of up to \$2,500 per violation.

Orders to Comply

An employer who violated CTC will be required to correct all practices and documents (whether applications, advertisements, policies, or others) and to submit documentation to the Division within 30 calendar days from the date of the order, demonstrating that ongoing and future job postings will comply with CTC and the Division's order. An employer's violation of a compliance order will result in fines that may include:

- for a party that fails to provide information they were ordered to provide to the Division, "a penalty of not less than fifty dollars for each day that such failure, neglect, or refusal continues" (C.R.S. § 8-1-117); and
- for a party that "fails, refuses, or neglects to perform any duty lawfully enjoined within the time prescribed by the director or fails, neglects, or refuses to obey any lawful order made by the director or any judgment or decree made by any court as provided in this article, for each such violation, such employer, employee, or any other person shall pay a penalty of not less than one hundred dollars for each day such violation, failure, neglect, or refusal continues" (C.R.S. § 8-1-140(2)).

Violations may also be referred for criminal prosecution under C.R.S. § 8-1-114.

The Division may additionally review future job postings made by the employer to determine if there are subsequent violations.

Additional Information

Visit the Division's [website](#), call 303-318-8441, or email cdle_labor_standards@state.co.us.