# HR Brief

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## DID YOU KNOW?

On July 29, 2014, the National Labor Relations Board (NLRB) announced that it would issue complaints against McDonald's USA, LLC, for labor violations committed by the company's franchises.

The decision is based on a presumption that franchisors and franchisees are joint employers and are jointly liable for NLRA violations. This announcement, along with the NLRB's pending review of its joint-employer standard in a separate case, could have significant implications for franchisors across the United States.

## "Ban the Box" Takes Criminal History off Job Applications

"Ban the box" refers to legislation being passed by many cities and counties that prohibits criminal history questions on job applications. The "box" is the section on job applications where applicants are asked whether they have had any criminal convictions. Ban-the-box laws do not prevent an employer from performing a background check after an interview or conditional offer of employment.

Twelve states have also passed ban-the-box legislation, most recently including California, Delaware, Illinois, Maryland, Minnesota, Nebraska and Rhode Island. At the federal level, the Equal Employment Opportunity Commission (EEOC) clarified in 2012 that a criminal offense must be directly related to the essential duties of the position in order for it to be used as a reason not to hire an individual.

One in 4 Americans has a criminal record, and asking on the application whether an applicant has a criminal history can lead to practical and legal problems, even if ban-the-box legislation has not been enacted where your company is located. There are several reasons why removing the criminal history inquiry from the application may be a good choice:

- Applicants may inaccurately respond, believing that minor, unrelated or long-ago offenses are not relevant. However, the question is typically a blanket inquiry and answering "no" equals giving false information, causing even a qualified candidate to be systematically rejected.
- The inquiry becomes meaningless when background checks are used for serious job candidates. At that point, if a criminal history shows up, HR can discuss the situation with the candidate to determine whether the offense is relevant to the position.
- Job applications are often reviewed for multiple job openings or used as a recruiting source. Because the EEOC prohibits using non-related criminal convictions as a reason not to hire, having information on a candidate's criminal history may cause hiring managers to accidentally violate EEOC rules.

## EEOC Issues Pregnancy Discrimination Guidance

New enforcement guidance for the treatment of pregnant employees was issued July 14, 2014, by the Equal Employment Opportunity Commission (EEOC), and the updates are effective immediately.

The guidance outlines several pregnancy-related circumstances that employers should carefully consider when establishing workplace policies, including:

- The Pregnancy Discrimination Act (PDA) prohibits discrimination based not only on an employee's current pregnancy, but also past and potential future pregnancies.
- Lactation and breastfeeding are protected pregnancy-related medical conditions, and employers must ensure equal treatment as employees with other similarly limiting medical conditions.
- Parental leave must be provided to similarly situated men and women on the same terms.

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