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March 29, 2024

### Los Angeles County Adopts New Background Check Requirements for Employers



Los Angeles County adopted a new [Fair Chance Ordinance for Employers](#) (the Ordinance) on February 27, 2024, which supplements California's 2018 Fair Chance Act (located in California Government Code Section 12952 et. seq.).

The Ordinance's stated purpose is to "provide equitable protections for individuals with criminal history seeking opportunities for gainful employment in the unincorporated areas of Los Angeles County" by restricting employers' use of criminal background checks. The Ordinance goes into effect September 3, 2024.

#### **Covered Employers and Covered Employees**

Employers located or doing business in the unincorporated areas of Los Angeles County who "employ five or more Employees regardless of location" are subject to the Ordinance. An "employee" is defined as "any individual whose Employment position involves, or in the case of an Applicant to an Employment position will involve, performing at least two (2) hours of work on average each week within the unincorporated areas of the County." The county has an [address lookup tool](#) to determine whether an address is located within the unincorporated area. The Ordinance applies to both applicants and current employees who apply for a promotion with their current employer.

#### **Job Postings**

The Ordinance prohibits covered employers from preventing or discouraging applicants or employees with a criminal history from applying for or responding to job solicitations, postings, announcements, and advertisements. It also requires covered employers to include language in job solicitations, bulletins, postings, announcements, and advertisements stating that qualified applicants with arrest or conviction records will be considered for employment in accordance with the Ordinance and the California Fair Chance Act. All job

postings, bulletins, postings, announcements, or advertisements, must provide detailed information, as specified in the Ordinance, if the employer intends to conduct a review of an applicant or employee's criminal history in connection with a conditional offer of employment.

### **Criminal History Inquiries After Conditional Offers of Employment: The Process**

Unless legally required to do so, the Ordinance generally prohibits covered employers from making an inquiry regarding criminal history before a conditional offer of employment is given. This means that, among other things, covered employers cannot encourage, ask for, or make opportunities for applicants or current employees to voluntarily disclose information about their criminal history. If a covered employer intends to conduct a review of an applicant's criminal history after the conditional offer of employment, a covered employer must provide notice in writing to the applicant or current employee that includes: (1) a statement that the conditional offer of employment is contingent upon the review of the individual's criminal history; (2) a statement that the employer has good cause (as defined by the Ordinance) to conduct a review of criminal history for the specific job position with supporting justification provided in writing; and (3) a complete list of all types of information, background, or history that will be reviewed by the employer if the employer is reviewing other factors in addition to criminal history as part of the applicant's background check process. This includes providing information as to whether education, social media history, employment history, motor vehicle or driving history, reference checks, credit history, licenses or credential verification, drug testing, or medical examinations will be reviewed.

If a covered employer will be obtaining a criminal background check report regarding the applicant or current employee, the employer must give a copy of the criminal background check report to the applicant or current employee before discussing any criminal history information with the applicant or current employee and before requesting further criminal history information from the applicant or current employee. The Ordinance also prohibits covered employers from inquiring about, requiring disclosure of, or basing an adverse action on certain types of criminal history, including but not limited to: (1) an arrest not followed by a conviction (with exceptions); (2) referral to or participation in a pretrial or posttrial diversion program or a deferral of judgment program; (3) convictions that were sealed, dismissed, expunged, inoperative, invalidated or statutorily eradicated; (4) a nonfelony conviction for possession of marijuana that is two or more years old; (5) a conviction that is more than seven years old (with some exceptions); or (6) a conviction based on conduct that has been decriminalized since the date of the conviction, including but not limited to decriminalized conduct related to the noncommercial use and cultivation of cannabis.

If a covered employer intends to deny an applicant or a current employee employment or rescind a conditional offer based solely or in part on the applicant's criminal history, the employer must conduct an individualized assessment that is documented *in writing*, evaluating whether the individual's criminal history has a direct, adverse, and negative bearing on the applicant's ability to perform the job's duties or responsibilities such that it justifies denying the applicant employment. That individualized assessment, at a minimum, must consider the following factors: (1) the nature and gravity of the offense or conduct, (2) the time that has passed since the offense or conduct and/or completion of the sentence, (3) the nature of the employment position sought, and (4) any mitigating circumstances the applicant voluntarily provides to the employer. A covered employer must give a preliminary notice of adverse action (via both regular mail and email) if the employer intends to rescind a conditional offer of employment after the individualized assessment. The individual then has at least five business days to respond to the preliminary notice before the employer can make a final decision on whether to withdraw the conditional offer of employment or take an adverse action. A covered employer must consider any information or documents submitted by the individual and conduct a second individualized assessment before making a final decision. If the employer's final decision is to withdraw the offer of employment or take any other adverse action, the employer must give notice (via both regular mail and email) in writing to the individual.

## Notice and Posting Requirements

The Ordinance also contains notice and posting requirements, and a covered employer must post a notice of the Ordinance in a conspicuous place at every workplace, job site, or other locations in the unincorporated areas of the county under the employer's control frequently visited by their employees or applicants. The notice must be available to applicants and employees in English and any other language spoken by at least 10% of the employer's workforce. The County of Los Angeles' Department of Consumer and Business Affairs (DCBA) will publish a notice for covered employers to use. The Ordinance also contains record retention requirements and prohibits retaliation.

## Enforcement

The Ordinance allows enforcement by the DCBA and provides a private right of action for an individual who has met the administrative exhaustion requirements. An aggrieved individual may seek legal or equitable relief, including penalties as described in the Ordinance, monetary damages, back pay, reinstatement in employment, or other appropriate injunctive relief, and they shall be awarded reasonable attorneys' fees and costs.

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The above summary is a nonexhaustive overview of the requirements of the Ordinance, which contains more than 40 pages of text. Employers in unincorporated areas of Los Angeles should contact experienced employment counsel with any questions related to the new Ordinance.

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## Authors

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