

THE NATIONAL LAW REVIEW

Los Angeles Joins Growing Number of States, Counties, and Cities Supporting “Ban the Box” Movement

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New ordinance prohibits private employers in the City of Los Angeles from inquiring about applicants' criminal history before making a conditional offer of employment.

APPLICATION FOR EMPLOYMENT

Q1) Have you ever been convicted of or plead guilty to a criminal offense?

YES
 NO
 NONE OF YOUR BUSINESS



On January 22, 2017, the “Fair Chance Initiative for Hiring” ordinance took effect in Los Angeles. The ordinance limit the ability of employers to inquire about a job applicant’s criminal history until *at least* a conditional job offer

has been extended to the applicant.

The Los Angeles ordinance is commonly referred to as a “Ban the Box” measure. The “Box” refers to a checkbox that employers often include on their employment applications asking the applicant to disclose whether they have been convicted of a crime. Those applicants who check the box are often immediately eliminated from consideration for the job regardless of their qualifications. Los Angeles joins a growing number of states, counties, and cities that have adopted some type of Ban the Box legislation. However, unlike some other jurisdictions that ban the box only until the completion of the initial interview, the Los Angeles law provides for additional protection to the applicant by prohibiting inquiries into prior criminal convictions until a conditional job offer actually is made.

Under the Los Angeles ordinance, employers cannot inquire about a job applicant’s criminal history on the employment application, through a job interview, from independent research, or from a third party such as a consumer reporting agency, until a conditional job offer to the applicant is made. The law applies to private-sector employers with 10 or more employees but makes an exception when: (1) the employer is required by law to obtain information regarding a criminal conviction; (2) the applicant would be required to possess or use a firearm in the course of employment; (3) the applicant is prohibited by the law from holding the position because of the criminal conviction; or (4) the employer is prohibited by the law from hiring someone who has been convicted of a crime.

Although the ordinance permits an employer to inquire about criminal history after a conditional offer of employment is made, employers are required to follow a “Fair Chance Process” before using such information in their hiring decision. The Fair Chance Process requires the employer to:

- Perform a written assessment that effectively links the specific aspects of the applicant’s criminal history with risks inherent in the duties of the employment position that is sought by the applicant. In performing the written assessment, the employer should consider at minimum [the factors listed by the EEOC](#) such as the nature and gravity of the offense or conduct, the time that has passed since the offense, conduct, or completion of the sentence, and the nature of the job sought.
- Provide a written notification of the proposed adverse action, a copy of the written assessment performed,

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and any other information or documentation supporting the adverse action.

- Wait at least five business days until after the applicant is informed of the proposed adverse action in order to allow the applicant to provide information and documentation supporting his or her case for employment.
- Consider the applicant's information and documentation and perform a written reassessment of the proposed adverse action.
- Notify the applicant of the decision and provide the applicant with the written reassessment.

Moreover, the ordinance requires that Los Angeles employers affirmatively state in all job advertisements, postings, and solicitations that they will consider qualified applicants with criminal histories. Employers must also post a notice informing applicants of the ordinance in a conspicuous place at every workplace. Finally, employers must retain documents related to the applicant's employment application and any written assessment and reassessment for three years.

Los Angeles employers covered by the new ordinance should review their job advertisements and postings, job applications, and hiring procedures to ensure they are compliant. Employers should also provide training to their employees involved recruitment, hiring, and interviewing as to when inquiries regarding criminal convictions can be made or used.

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