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Unincorporated L.A. County Employers Must Comply With New Rules When Considering Applicants' Criminal History

California Employment Law Update on **April 23, 2024**

In 2018, California's statewide Fair Chance Act ("FCA") went into effect, imposing limitations on employers' consideration of applicants' criminal records and requiring a fair chance process before a candidate's offer was revoked. A year earlier, the City of Los Angeles had enacted its own Fair Chance Initiative for Hiring, which imposed similar obligations on employers within the boundaries of the City. Now, Los Angeles County is following suit.

Operative on September 3, 2024, the Los Angeles County Fair Chance Ordinance for Employers ("FCO") expands upon employers' obligations under the FCA. The new law applies to employers with five or more employees in the *unincorporated areas* of Los Angeles County—i.e., the portions of the nation's most populous county that do not have their own city council.

The FCO imposes new obligations on employers and limitations on the hiring process at a number of different points. With respect to job postings, the FCO requires that employers: (1) include language in all job postings that qualified applicants with arrest or conviction records will be considered for employment; (2) specify any laws that impose restrictions or prohibit the hiring of individuals with specified criminal histories; and (3) include a list of all material job duties of the specific position which the employer reasonably believes that criminal history may have a direct, adverse, and negative relationship potentially resulting in the withdrawal of the conditional offer of employment, for any position for which an employer may seek to rely on a criminal background check.

Consistent with the statewide FCA, the FCO prohibits employers from inquiring about convictions until after a conditional offer of employment has been made. If an employer intends to conduct a background check after a conditional offer of employment, the employer must provide written notice that includes:

- A statement that the conditional offer of employment is contingent upon review of the individual's criminal history;
- A statement that the employer has good cause to conduct a review of the individual's criminal history for the job position with supporting justification provided in writing; and
- A complete list of all types of information, background, or history that will be reviewed by the employer (e.g., education, social media history, etc.).

If an employer intends to revoke a conditional offer of employment based on a criminal history, the employer must, first, conduct an initial individualized assessment, documented in writing.

If after performing the initial individualized assessment, the employer intends to withdraw or rescind a conditional offer or take any other adverse action, the employer must provide the applicant or employee with a preliminary notice of adverse action. The notice must be sent by regular mail and email (if available) and, in addition to the information required under the FCA, the employer must also provide the individual with a copy of the initial individualized assessment.

If the applicant or employee notifies the employer in writing within five business days that they dispute the accuracy of the criminal history information and are taking steps to obtain supporting evidence or that they need additional time to obtain evidence of rehabilitation or mitigating circumstances, then, the employer must provide an additional 10 business days for the candidate to respond.

If an applicant or employee has timely submitted any information or documents in response to the preliminary notice, the employer must conduct a *second* individualized assessment. If the employer still wishes to withdraw a conditional offer or take any other adverse action, the employer must notify the individual in writing by regular mail and email (if available). In addition to information required under the FCA, the employer also must:

- Provide the individual with a copy of the second individualized assessment;
- Again, notify the individual of the disqualifying conviction that is the basis for the adverse action;
- Notify the individual of the right to file a complaint with the Los Angeles County Department of Consumer & Business Affairs for violation of the FCO; and
- If the employer provides the final notice more than 30 calendar days after the applicant or employee provided a timely response to the preliminary notice, the employer must provide a written explanation justifying why the final decision was not made within 30 days.

In addition to the other substantive obligations, the FCO has a minimum four-year recordkeeping requirement.

The FCO also comes with *real* potential consequences. It empowers the County's Department of Consumer and Business Affairs to investigate and issue penalties from $5,000-$20,000 for each progressive violation of the FCO's requirements. In addition, subject to certain exhaustion requirements, the FCO provides for a private right of action for aggrieved individuals.

Given that some of the new requirements are more onerous than existing obligations under the statewide FCA, employers in unincorporated Los Angeles County should review and update all job postings and their hiring procedures before September.

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