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CRIMINAL HISTORY

Los Angeles 'bans the box'

by Michael Futterman and
Jaime Touchstone
Futterman Dupree Dodd
Croley Maier LLP

Los Angeles has joined a growing list of cities that are restricting the use of criminal background information in hiring. Under a new law, Los Angeles private-sector businesses employing at least 10 people cannot inquire about a job applicant's criminal history, via employment applications, interview questions, or independent research until a conditional job offer has been extended to the applicant. Proponents of the new law hope that going forward, jobseekers will be judged based on their qualifications rather than their criminal record.

What is the 'box'? Why is it being 'banned'?

Job applications frequently include a "box" to be checked if an applicant has a criminal conviction. In some applications, checking "yes" automatically excludes applicants from consideration, regardless of any relationship between the criminal conduct and the duties and responsibilities of the job, the length of time since the conviction, or the risk the conduct will recur on the job. Automatic exclusion eliminates otherwise qualified applicants and acts as a barrier to employment for those convicted of crimes. The practice increases the risk of recidivism and unemployment in minority communities. To combat these injustices, various states and municipalities,

and even the federal government, have implemented laws "banning" the use of a conviction "box" on applications and limiting the amount of criminal background information employers can request from applicants during initial stages of the hiring process.

Specifically, in 2013, California Governor Jerry Brown signed legislation prohibiting government employers from seeking the disclosure of conviction history until they determine whether the applicant meets the minimum employment qualifications. And in 2015, former President Barack Obama announced that the federal government and its contractors would not consider criminal background information in the initial stages of hiring. To date, more than 20 states and 150 cities and counties nationwide have adopted fair-chance hiring protections that prohibit employers from inquiring into a job applicant's criminal history until they determine whether the applicant is qualified for the position.

Los Angeles mayor signs Fair Chance Initiative

Following the trend across the country, in December 2016, Los Angeles Mayor Eric Garcetti signed into law the Fair Chance Initiative for Hiring, which restricts the use of criminal background history. The law took effect on January 22, 2017. Private-sector Los Angeles employers with 10 or more employees are

covered by the ordinance, which protects most job applicants and trainees, whether they're applying for full- or part-time, contract, temporary, seasonal, or commissioned work. The ordinance also applies to job placement and referral agencies.

The ordinance does not apply if (1) the employer is legally required to run a criminal background check on applicants; (2) the job sought requires the use or possession of a gun; (3) the applicant is legally prohibited from holding the position because of a past conviction; or (4) the employer is legally prohibited from hiring someone who has been convicted of a crime.

Under the ordinance, covered employers may not initially inquire into an applicant's criminal background via a job application or verbally in an interview, and may not independently research the information or obtain it from a third party, such as a consumer reporting agency. Once a "conditional offer of employment" is made, the employer may inquire about, or require the disclosure of, an applicant's criminal history.

However, an employer cannot automatically disqualify an applicant with a criminal history. Instead, it must undertake a "Fair Chance Process" designed to assess, in writing, the specific aspects of the applicant's criminal history compared to the risks inherent in the applicable job duties and responsibilities. The employer must, at a minimum, consider:

- (1) The nature and gravity of the criminal offense(s) or conduct;
- (2) The time that has passed since the offense(s), conduct, or completion of the sentence;
- (3) The applicant's age at the time of the conviction or release from prison;
- (4) The nature of the job sought;
- (5) The applicant's employment history;
- (6) Employment or character references and any other information regarding fitness for the position; and
- (7) The applicant's eligibility for bonding via a government program.

Before withdrawing a job offer or taking any other adverse action, the employer must provide the applicant written notification of the proposed action, a copy of the written assessment, and any other relevant information or documentation. The applicant then has five business days to refute the assessment with evidence of rehabilitation or other mitigating information. The employer must consider that information and prepare a written reassessment. If the employer ultimately decides to follow through with the adverse action, it must notify the applicant of its final decision and provide him a copy of the reassessment.

Record keeping and penalties for noncompliance

Covered Los Angeles employers must state in all job advertisements that they will consider qualified applicants with criminal histories "in a manner consistent with the requirements of" the ordinance. Employers must also notify applicants of the ordinance via a "conspicuous" posting at every workplace or jobsite visited by applicants and send a copy of the notice to any labor unions with which they have collective bargaining agreements. Employers must retain all records related to employment applications and related fair chance assessments for three years.

Employers that fail to comply with the ordinance may be subject to fines and civil or criminal prosecution. And, as with most employment-related laws, an employer is prohibited from retaliating against any employee who seeks to assert or enforce her rights under the ordinance. *Ordinance*

No. 194852, adding Article 9 to Chapter XVIII of the Los Angeles Municipal Code (The Los Angeles Fair Chance Initiative for Hiring).

Bottom line

Ban-the-box laws have become increasingly common, and we expect other municipalities in California to follow the lead of Los Angeles. Businesses should assess the applicability of federal, state, and local ban-the-box laws. Employment application materials should be carefully reviewed, and hiring policies should be crafted to ensure that they comply with applicable law governing the disclosure and use of applicants' criminal background information. Employers should provide supervisors proper guidance and training on how and when to request or rely on criminal history when making hiring decisions.

The authors can be reached at Futterman Dupree Dodd Croley Maier LLP in San Francisco, mfutterman@fddcm.com and jtouchstone@fddcm.com. ♣