

8 Things Employers Should Know About LA County's New Fair Chance Ordinance

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Los Angeles County's new [Fair Chance Ordinance](#), passed earlier this year, goes into effect Sept. 3, 2024. This ordinance builds on California's "Ban the Box" law, adding further requirements for employers to ensure fair hiring practices and protections for individuals with criminal histories.

The ordinance applies to employers with five or more employees within the unincorporated areas of Los Angeles County. This broader application compared to state law, which generally applies to employers with 15 or more employees, means that smaller businesses will also need to comply. Because job postings cannot be restricted to Los Angeles residents only, this ordinance will touch employers throughout Southern California. Here are eight things you should know.

1. Penalties

The ordinance authorizes the Los Angeles County Department of Consumer & Business Affairs (DCBA) to investigate violations and impose fines ranging from \$5,000 to \$20,000 per infraction. The ordinance also allows a private right of action for applicants and employees after the applicant or employee files a complaint with the DCBA and obtains a right-to-sue notice.

2. Job Postings

Under the ordinance, employers must:

- State that qualified applicants with arrest or conviction records will be considered for employment
- Follow local, state or federal laws that restrict hiring people with certain criminal records for a job and include those restrictions in all job ads, postings, and announcements
- Include a list of all material job duties for positions where a criminal background may directly and negatively effect employment, potentially leading to the withdrawal of a conditional job offer

3. Conditional Offer Letters

The ordinance introduces changes to conditional job offers, such as:

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- Employers are prohibited from asking about criminal convictions until after a conditional job offer has been made
 - If conducting a background check, employers must provide a written notice containing:
 - A statement that the job offer depends on the review of the applicant's criminal history
 - Justification for reviewing the criminal history and its relevance to the job position
 - A comprehensive list of all information and history types to be reviewed, such as education, social media, employment history, driving record, reference checks, and drug testing

4. Prohibited Considerations

Employers cannot consider the following:

- Arrests not followed by conviction (except unresolved arrests)
- Referrals to or participation in diversion or deferral programs
- Convictions that have been sealed, dismissed, or expunged
- Juvenile records
- Non-felony marijuana possession convictions older than two years
- Any conviction that is more than seven years old
- Infractions, except some driving infractions
- Convictions for conduct that has since been decriminalized

5. Individualized Assessment and Preliminary Notice of Adverse Action

Employers must conduct an individualized assessment before rescinding a conditional job offer based on a criminal record. If an employer intends to withdraw a conditional offer or take any other adverse action, it must provide a preliminary notice via both regular mail and email, if available, including:

- Notice of intent to withdraw the conditional offer of employment or take adverse action due to criminal history
- Explanation of the applicant's right to respond before the decision is finalized, including waiting periods and response timelines
- A copy of the initial individualized assessment
- Notice of the specific convictions that are the basis for the adverse action
- A copy of the criminal background check report and any other related information considered

6. Applicant Challenge Procedures

Applicants have five days to challenge the accuracy of the criminal history data or present evidence of rehabilitation and mitigating factors. If additional time is needed, they are granted at least 10 more business days.

7. Second Individualized Assessment and Final Decision

If an applicant disputes the information, employers must conduct a second individualized assessment. If the final decision is to withdraw the offer or take adverse action, the employer must provide a final notice of adverse action including:

- Final decision notice

- A copy of the second individualized assessment
- Notice of the disqualifying convictions that are the basis for the adverse action
- Information on any procedure the employer has for challenging the decision or requesting reconsideration
- Notice of the applicant or employee's right to file a complaint with the DCBA regarding ordinance violations and with the state's Civil Rights Department for Fair Chance Act violations
- An explanation for any delays if the final notice is provided more than 30 days after the applicant's response to the preliminary notice

8. Postings and Records Retention

Employers must post a notice of the ordinance at every worksite in unincorporated Los Angeles County and on company websites frequently visited by employees or applicants. Employers must also preserve all related documents for four years after receiving the applicant's employment application.

Takeaways

Employers in unincorporated Los Angeles County should consider reviewing the new Fair Chance Ordinance and adjust their hiring practices to comply. This ordinance significantly affects when and how criminal history information can be requested and used. Given the broader application to smaller businesses and the inability to limit job ads to the Los Angeles County area, the ordinance will likely influence hiring practices throughout Southern California.

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