

Complying With Unprecedented Criminal History Requirements in Los Angeles County

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The Los Angeles County Fair Chance Ordinance for Employers (FCOE), which took effect on September 3, 2024, imposes several new compliance requirements regarding the consideration of criminal history in employment decisions. While some of its requirements mirror those under California State law, many of the FCOE's requirements take things a step further.

Los Angeles County Has “Entered the Chat”

In 2016, Los Angeles enacted the Los Angeles Fair Chance Initiative for Hiring Ordinance (FCIHO) to regulate the use of criminal background checks in employment for work performed within the city. Soon after, California enacted the Fair Chance Act (FCA) in 2018, imposing similarly comprehensive regulations on employers with five or more employees doing business in the Golden State.

Not to be outdone by the city and state, the Los Angeles County Board of Supervisors passed the FCOE earlier this year, which took effect on September 3, 2024. The FCOE goes beyond the state law by imposing stricter rules on the use of criminal background information in hiring decisions in *unincorporated* Los Angeles County, which is comprised of over 100 different communities peppered throughout 2,653.5 square miles (or 65%) of the County's total territory. In light of this geographic reality, many employers in and around the Southern California region will likely fall subject to the FCOE's onerous requirements.

Coverage

The FCOE applies to any employer that: 1) is located or doing business in the unincorporated areas of Los Angeles County, and 2) employs five or more employees anywhere, regardless of location. Notably, owners, managers, and supervisors must be included for purposes of determining whether this five-person threshold is met. Furthermore, employers are broadly defined to include job placement or temporary agencies, nonprofit organizations, and entities which evaluate an applicant's criminal history on behalf of other companies.

The ordinance defines employees as individuals who perform (or in the case of applicants, are intended to perform) at least two hours of work on average each week within the unincorporated areas of the county. Moreover, the FCOE expansively defines “employment” to include full-time

workers, part-time workers, contract workers, temporary or seasonal workers, and contingent/temporary workers.

The physical location of the work must be within the unincorporated areas of Los Angeles County, and the ordinance defines this to include remote work from any location within the unincorporated areas of the county. Thus, the potential impact of this law on out-of-state employers with remote workers in unincorporated Los Angeles County should not be overlooked.

Los Angeles County provides a [useful website](#) for determining whether a facility or remote worker's address falls within unincorporated Los Angeles County.

Notable Provisions

The FCOE expands on current state law requirements and introduces entirely new obligations for employers with employees performing work in unincorporated areas of Los Angeles County. Some, but not all, of the ordinance's provisions are summarized below.

Prohibited Inquiries

Similar to state law, the FCOE prohibits employers from inquiring about an applicant's criminal history before a conditional offer is made (even if the applicant prematurely volunteers such information during the initial hiring process). The FCOE imposes additional restrictions by prohibiting employers from discussing an applicant's criminal history before the criminal background check is completed, and a copy of it is provided to the applicant for their review.

Look-Back Periods

The FCOE limits the consideration of criminal history to a look-back period of no more than **seven years**. In contrast, state law generally does not impose a temporal limitation on criminal history, save for a few limited exceptions (e.g., juvenile criminal history, arrests not resulting in convictions, etc.).

Job Advertisements and Notice Requirements

Both the FCOE and state law prohibit statements in job advertisements, solicitations, bulletins, postings, and internal company announcements that discourage individuals with criminal histories from seeking employment (e.g., "we do not hire felons"). However, the FCOE requires that employers also provide a written notice of intent to perform a criminal history review in conjunction with the job advertisement. The notice must include a list of all "material job duties" of the job position which may reasonably have a direct, adverse, and negative relationship with criminal history and could potentially result in the withdrawal of a conditional job offer. If an employer is legally required to deny applicants with specific criminal records, it must also specify the relevant legal provisions imposing that restriction in the job advertisement.

Conditional Offers

Unlike California's FCA, which does not impose specific requirements pertaining to the language used in conditional offer letters, the FCOE requires conditional job offers to include the following:

- A written statement that the offer is contingent upon a review of the applicant's criminal history;

- A written “good cause” statement justifying why the criminal background review is necessary for the position (a generic statement only citing “safety concerns” will not suffice); and
- The written disclosure of any other background checks or screening requirements that will be conducted by the employer, such as drug testing, social media history, or education verification.

Written Assessments

Both the FCOE and state law require employers to conduct an individualized assessment of the applicant's criminal history before withdrawing a conditional job offer. However, unlike the FCA, the FCOE requires the individualized assessment to be documented in writing **and** provided to the applicant in conjunction with the mandatory preliminary and final adverse action notices before a conditional job offer is rescinded.

Harsh Penalties

Unlike state law — which provides maximum fines of \$500 for violations — the FCOE imposes far greater penalties, including fines of up to \$20,000 per violation and further sanctions by the Los Angeles County Department of Consumer and Business Affairs, which could impact an employer's business licenses.

Given the FCOE's onerous requirements as well as the breadth of its potential application to numerous employers doing business in and around Los Angeles County, employers are strongly encouraged to conduct a review of their background screening practices with the assistance of legal counsel to determine coverage issues and ensure full compliance with the law.

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