COMPLYING WITH THE LOS ANGELES COUNTY FAIR CHANCE ORDINANCE FOR EMPLOYERS

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By: Eugene C. Ryu

GENERAL OVERVIEW OF THE LOS ANGELES COUNTY FAIR CHANCE ORDINANCE

California has long been at the forefront of promoting equal employment opportunity for individuals with criminal histories. Statewide laws such as the Fair Chance Act, also known as “Ban the Box” legislation, set baseline requirements for employers. Continuing this trend, on 3 September 2024, Los Angeles County enacted the Fair Chance Ordinance for Employers (Ordinance). This Ordinance introduces heightened standards and additional requirements to California's already existing protections for workers (including employees, independent contractors, and freelancers) with criminal histories. As discussed below, employers subject to the Ordinance must comply with new requirements for job postings, conditional offer letters, procedures for adjudicating criminal history, and related notifications. The alert below provides a general overview of the Ordinance.

WHICH EMPLOYERS ARE AFFECTED?

Although there is some ambiguity in how the Ordinance is drafted, the Ordinance applies to employers of all sizes that have five or more employees working at least two hours a week in the unincorporated areas of Los Angeles County[1] (those employees can otherwise be working anywhere else as long as the two hour per week threshold is met). Certain Ordinance requirements, including the restrictions on prohibited inquiries and job postings, do not apply to positions where an employer is required by state, federal, or local law to conduct criminal background checks.

For example, a large corporation with only two employees based in the unincorporated areas of Los Angeles County likely would not be subject to the Ordinance. However, a small business that has five employees working within the unincorporated areas of Los Angeles and two employees working in an incorporated area of the County would be required to comply with the Ordinance. Employers should also be mindful of employees hired outside of Los Angeles County who might occasionally perform work within the county, as they too could trigger compliance obligations under the Ordinance. Likewise, employers covered by the Ordinance must comply as to applicants who are applying for jobs that involve working two or more hours in the unincorporated areas of Los Angeles County.

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WHAT QUALIFIES AS UNINCORPORATED AREAS OF LOS ANGELES COUNTY?

Unincorporated areas are regions within Los Angeles County that are not governed by a specific city or municipality but fall under the jurisdiction of the Los Angeles County Board of Supervisors. To determine whether a particular workplace or jobsite is located in these areas, employers can visit here.

This Ordinance also applies to remote employees, provided their physical work location is within the unincorporated areas of Los Angeles County. Whether teleworking or telecommuting, if the employee performs their duties from a location within these unincorporated areas for at least two hours a week, the Ordinance's requirements will apply.

ARE INDEPENDENT CONTRACTORS INCLUDED?

Yes. The Ordinance uses a broad definition of “employee,” which includes any individual whose position involves, or in the case of an applicant will involve, performing at least two hours of work on average each week within the unincorporated areas of the county. Under the Ordinance, “employment” is not limited to traditional employment relationships but extends to work or services provided under a contract in furtherance of an employer's business enterprise, such as in the case of independent contractors or freelancers. This means businesses that utilize such services must comply with the Ordinance when these individuals work within the relevant areas.

NEW REQUIREMENTS FOR JOB POSTINGS

Employers are required to post a notice in a conspicuous place at any workplace or jobsite within the unincorporated areas of Los Angeles County where any worker is employed, informing them of their rights under the Ordinance. Employers can access the official posting notice here.

Moreover, employers must not deter individuals with criminal histories from applying for jobs by using phrases such as “No Felons,” “No Convictions,” or “Must Have Clean Background.” Such practices are prohibited under the Ordinance and could result in legal action.

CRIMINAL BACKGROUND CHECK

The Ordinance prohibits employers from inquiring about an applicant's criminal history before making a conditional job offer, with limited exceptions. Employers must provide a written good cause justification for conducting a criminal background check and cannot consider convictions older than seven years, except for certain positions involving services to minors, dependent adults, the elderly, or those related to public funds or benefits.

Employers must issue a written Notice of Intent before conducting a background check, outlining the reason for the review. The Ordinance emphasizes that, unless legally mandated, criminal background checks related to hiring or continued employment are voluntary and should be accompanied by a good cause justification.

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REQUIRED CONSIDERATIONS BEFORE MAKING EMPLOYMENT DECISIONS

The Ordinance prohibits employers from asking individuals about their criminal history until after a conditional job offer has been made and requires employers to engage in a Fair Chance Process (outlined below) before taking any adverse employment action, such as refusing to hire, denying promotions, reassignments, disciplinary actions, withdrawing a job offer, or terminating an employee based on criminal history:

Initial Individualized Assessment

Employers may not consider criminal history information older than seven years, with limited exceptions. Employers must undertake a written, Initial Individualized Assessment and consider factors such as the nature and gravity of the offense, the time that has passed since the offense, and the nature of the job sought prior to making any employment decision based on an applicant or employee's background check.[2] The employer must assess whether the individual's criminal history has a direct, adverse, and negative bearing on their ability to perform their job duties.

Preliminary Notice of Adverse Action

If the employer decides to take adverse action, they must issue a Preliminary Notice of Adverse Action. The employer must also provide a copy of the Initial Individualized Assessment and criminal background report, along with information on how an applicant may respond by submitting evidence of errors, rehabilitation, or mitigating circumstances.

Employee Response Period

The individual has five business days to respond, providing evidence of rehabilitation or other mitigating factors.

Second Individualized Assessment

The employer must conduct a second assessment, taking into account any new information before making a final decision.

Final Notice Of Adverse Action

If the decision to take adverse action is upheld, the employer must issue a final notice, a copy of the Second Individualized Assessment, and information on the right to file a complaint for violation of the Ordinance.

EMPLOYEES' RIGHTS UNDER THE ORDINANCE

Individuals who believe their rights under the FCO have been violated can file a private, civil lawsuit against the employer. Alternatively, they may file a complaint with the Department of Consumer and Business Affairs - Office of Labor Equity within one year of the alleged violation. The Ordinance thus provides a robust framework to support fair employment opportunities while ensuring employers adhere to equitable hiring practices.

For additional information, employers may reference the Los Angeles County Fair Chance Ordinance Frequently Asked Questions.

The Firm's Labor, Employment, and Workplace Safety practice can assist with all aspects of preparing for and maintaining compliance under the Ordinance.

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FOOTNOTES

[1] *See* FAQ from the Los Angeles County Department of Consumer & Business Affairs, https://dcba.lacounty.gov/wp-content/uploads/2024/08/FCOE-FAQs-Eng-Final-8.30.2024.pdf.

[2] This individualized assessment is similar to the factors recommended by the Equal Employment Opportunity Commission as well as those that must be considered when evaluating a conviction record under the Illinois Human Rights Act. *See* 775 ILCS 5/2-103.1.

KEY CONTACTS



EUGENE C. RYU
PRACTICE AREA LEADER - LITIGATION

LOS ANGELES, SAN FRANCISCO
+1.310.552.5035
GENE.RYU@KLGATES.COM

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