



los angeles county passes new "fair chance ordinance" for unincorporated areas, further restricting employers' use of criminal history

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Late last month, Los Angeles County passed a new Fair Chance Ordinance For Employers that aims to provide greater protections to individuals with criminal history seeking employment (or promotion) in unincorporated areas of Los Angeles County. This Ordinance, which arguably restricts employers' ability to consider criminal history significantly more than any current federal or state criminal conviction history legislation, takes effect on September 3, 2024.

Where The Ordinance Applies

Notably, the Ordinance only applies to the following individuals:

- Applicants seeking employment or employees currently working at an employer's worksite located within the *unincorporated areas of Los Angeles County*, as long as the employer has five or more employees; and
- Employees whose jobs involve working on average at least two hours each week within the unincorporated areas of Los Angeles County, whether working in-person, remotely or teleworking.

There are approximately 120-125 unincorporated areas in LA County (some as small as a few blocks and some as large as an urban center), a list of which can be found [here](#).

Which Employers Are Covered?

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practice areas

employment litigation &
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labor & employment



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For purposes of the Ordinance, an "employer" includes any entity with five or more employees located anywhere in the world, that evaluates an applicant or employee's criminal history on behalf of an employer, or acts as an agent of an employer (directly or indirectly) in evaluating an applicant's or employee's criminal history. Furthermore, the Ordinance states that an "employer" includes job placement agencies, temporary agencies, referral agencies and other employment agencies, as well as non-profit organizations. The Ordinance takes a similarly expansive approach to the term "employment," as it means any occupation, vocation, job or work, and includes temporary, part-time, seasonal and contracted work, work through the services of an employment agency, non-profit organization, or any form of vocational or educational training, with or without pay.

New and Onerous Job Posting Requirements for Covered Employers

The thrust of the Ordinance is twofold, as it imposes numerous new obligations on covered employers in connection with job postings and background checks.

Regarding job postings (i.e. job solicitations, postings, announcements and advertisements), the Ordinance requires employers to include language stating that qualified applicants with arrest or conviction records will be considered for employment. The inclusion of any language that may deter applicants with criminal histories from applying for a job is prohibited, and job postings must specify if there are any applicable laws that restrict hiring individuals with criminal histories.

Additionally, if an employer intends to review an individual's criminal history after making a conditional employment offer, the employer is required to have stated this intention in the position's original job posting. Furthermore, the job posting must include a list of all material job duties that the employer reasonably believes a criminal history may directly, adversely and negatively affect, and which could therefore result in withdrawal of the conditional employment offer.

Additional Background Check Obligations

Regarding background checks, the Ordinance requires employers that plan to conduct a criminal background check after extending a conditional offer of employment to first provide the individual with written notice of the impending criminal background check. The written notice must inform the individual that the conditional employment offer is contingent on the criminal background check, and also include a "good cause" justification of why the specific job position requires a criminal history review.

Furthermore, employers are prohibited from asking or requesting an individual to provide information (either orally or in writing) regarding their criminal history, unresolved arrests or prior convictions, or to complete any form regarding their criminal history, *prior* to receiving the background check results. Once an employer receives these results, and before engaging in any criminal history discussions with the individual, a copy of the background check results must be provided to the individual.



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The obligations imposed by this ordinance are in addition to those arising under applicable background check laws (i.e., the Fair Credit Reporting Act and California Investigative Consumer Reporting Agencies Act) and the California Fair Chance Act.

Additional Posting and Recordkeeping Obligations

Covered employers are required to post a notice of the Ordinance at each of their workplaces in the unincorporated areas of LA County and on webpages frequently visited by applicants or employees seeking a promotion. Employers must also send a copy of the Ordinance notice to each union or representative of workers with which they have a collective bargaining agreement or other agreement/understanding that is applicable to the employees in the unincorporated areas of the County. By the operative date of the Ordinance (i.e. September 3rd), the County of Los Angeles Department of Consumer and Business Affairs will publish and make available to employers a notice suitable for such posting in the workplace, informing applicants and employees of their rights under the Ordinance.

Finally, covered employers are required to maintain all records, data and documents relating to the Ordinance, which includes job postings, conditional offers and withdrawal letters, for a minimum of four years after the receipt of an applicant's employment application. Notably, the Ordinance authorizes both public and private remedies, including civil claims.

Conclusion

The Ordinance is extremely detailed, and the above summarizes several (but certainly not all) of its key provisions —employers who may be subject to the Ordinance would be well advised to consult with their trusted MSK Labor & Employment attorney for guidance concerning implementation of new policies and procedures to comply with its myriad requirements.