



Client Alerts

California Compliant: Hiring Workers Just Got More Complicated in California

March 26, 2024 | (Time to read: 6 minutes)

California companies are well aware that current or former employees may assert legal claims based on alleged discrimination, retaliation, or harassment. Lawsuits based on purported violations of the state's wage and hour laws also may be top of mind. But employers should know that they could have exposure based on their actions *when they post available positions and before they make hiring decisions* (for example, read [here](#) about the obligation to disclose the "pay scale" for a role in the job posting). To the extent that they wish to consider a person's conviction history in making employment decisions, companies must comply with the state's Fair Chance Act *and, as applicable, other local laws* relating to "fair hiring" – which can affect what companies can and cannot say in a job posting. Unfortunately, it's about to get even more complicated because of an ordinance passed recently by the Supervisors of the County of Los Angeles.

Background – California's Fair Chance Act and the City of LA's Fair Chance Ordinance

California's Fair Chance Act (FCA, Government Code Section 12952) restricts both the time when and extent to which employers can consider a person's conviction history in making employment decisions (read more [here](#)). Among other things, the FCA prohibits covered employers from: including a question about criminal convictions in an employment application; asking an applicant about their criminal history during an interview; or searching for information about a person's criminal history before making a conditional offer of employment. Employers can take criminal history into account only *after* making a conditional offer of employment. The FCA's implementing regulations strictly limit the manner in which businesses assess whether a person's conviction history is disqualifying for the role.

Companies that are "located or doing business in the" City of Los Angeles and have 10 or more employees also must comply with the City's Fair Chance Initiative for Hiring Ordinance (FCIHO) (read more [here](#)). For purposes of the FCIHO, "employees" are those who perform "at least two hours of work on average each week within the geographic boundaries of the City" and qualify under the state's minimum wage laws. Like the FCA, the FCIHO prohibits most employers from inquiring about a person's conviction history before making a conditional offer of employment. The FCIHO differs from the FCA, however, in that the FCIHO also:

- requires employers to "state in all solicitations or advertisements seeking Applicants [] that the Employer will consider for employment qualified Applicants with Criminal Histories in a manner consistent" with the FCIHO. In its FAQs about the FCIHO, the City suggests including this language: *We will consider for employment all qualified Applicants, including those with Criminal Histories, in a manner consistent with the requirements of applicable state and local laws, including the City of Los Angeles' Fair Chance Initiative for Hiring Ordinance.*
- obligates employers to "post a notice informing Applicants of the provisions of this article in a conspicuous place at every workplace, job site or other location in the City under the Employer's control and visited by Employment Applicants." Sample Notices in English and Spanish are available online [here](#).

The City and County of San Francisco also has a Fair Chance Ordinance. More information about that is available [here](#).

Los Angeles County's New Fair Chance Ordinance

New Los Angeles County Ordinance No. 2024-0012 (the "Fair Chance Ordinance for Employers," to be codified in the Consumer Protection, Business and Wage Regulations of the Los Angeles County Code) adds another layer of restrictions and requirements to employers' hiring practices. Adopted in late February, the Ordinance reflects the Supervisors' findings that "[t]he rate of employers conducting background checks has risen, which has impacted rates of

employment for system-impacted individuals, and implicitly normalized the assumption that, despite known racial biases in policing and the criminal legal system, those convicted of a crime are to be viewed with suspicion even after returning from incarceration.” The Supervisors assert that they passed the Ordinance “to overcome the stigma and unfair biases associated with persons with criminal records when employers are making hiring and employment decisions, and to ensure individuals with criminal history have fair and equitable access to opportunities for gainful employment in Los Angeles County.”

Which Employers Must Comply with the County Ordinance?

The County Ordinance, which will be effective on September 3, 2024, applies to employers “located or doing business in the unincorporated areas of Los Angeles County” and having five or more employees – “regardless of location” – who perform (or in the case of an applicant, would perform) two or more hours’ work each week (on average) within the unincorporated areas of the County. *Notably, individuals may be counted as “employees” in this context whether they are temporary, seasonal, or part-time, and include those who perform services as “independent contractors,” “freelancers,” or through an “employment agency.”*

Businesses wondering if the Ordinance applies to them may need to brush up on their geography. According to the County’s website, www.lacounty.gov, more than 65% of the County is “unincorporated” (the County has “88 incorporated cities,” each having their own city council – areas within the County that are not within one of the 88 cities are “unincorporated”). The threshold question is whether the business is located, or does business in, an unincorporated area. When the answer to that question is “yes,” the company must determine which of its employees work (*either in-person or remotely*) in unincorporated areas.

What Does the Ordinance Require?

In many ways, the County’s Ordinance mirrors the FCA and the FCIHO. Generally speaking, covered employers cannot inquire about a person’s conviction history before making a conditional offer of employment. If the employer later becomes aware of, and considers withdrawing the conditional offer because of, a person’s conviction history, it must perform an individualized assessment that considers specific factors. The employer cannot rescind an offer (or in the case of a current employee, take an adverse action) without providing written notice of its intent, and must permit the applicant/employee to present evidence of mitigating circumstances. When a person submits a response to the employer’s notice, the employer must conduct a second individualized assessment before making a final decision.

But the Ordinance is more burdensome than the FCA and the FCIHO in some respects. For example:

- Covered employers must include in job postings not only language affirming that individuals will be considered in accordance with the Ordinance (and the FCA) but also “a list of all material job duties of the specific job position [for] which the Employer reasonably believes that Criminal History may have a direct, adverse, and negative relationship potentially resulting in the withdrawal of” a conditional offer of employment. Covered employers should carefully review all job postings before they go live.
- Employers must post a notice about the Ordinance “in a conspicuous place at every workplace, job site or other locations in the unincorporated areas of the County ... frequently visited by their Employees or Applicants,” and “on website pages frequently visited” by employees or applicants. In some circumstances, notices must be made in multiple languages.
- If an employer intends to review a person’s conviction history after making a conditional offer of employment, the company must provide the applicant a written “statement that the Employer has good cause to conduct a review of Criminal History for the specific job position with supporting justification...”. The Ordinance provides that a “general statement” such as “safety concerns” would be insufficient.
- If the employer intends to review other types of information, specifically including “social media history,” before making a final decision, the employer must notify the applicant in writing about “all types of information” that it will review.
- When the employer makes a final decision to withdraw a conditional offer, it must inform the applicant of its decision by mail and e-mail and notify the applicant of their right to file a complaint with the County’s Department of Consumer &



California Compliant: Hiring Workers Just Got More Complicated in California

Business Affairs (for an alleged violation of the Ordinance) and/or the state's Civil Rights Department (for an alleged violation of the FCA).

The Ordinance is lengthy – covered employers should review it in detail and may wish to consult counsel about both its coverage and application, including the deadline for giving an applicant notice of the employer's final decision and the consequences of failing to meet the deadline. The Ordinance prohibits retaliation against anyone who exercises rights protected by the Ordinance and establishes a rebuttable presumption of unlawful retaliation if an employer takes an adverse action against a person within 90 days of their exercise of such rights.

What to Watch

The County's Department of Consumer and Business Affairs is expected to publish, before the effective date of the Ordinance, notices for employers to post at workplaces. Employers can expect other localities to weigh in with their own versions of fair hiring/fair chance protocols in the future.

Kate LaQuay is a partner resident in Munck Wilson's Los Angeles office.

Munck Wilson Mandala is a full-service law firm known for its accomplished teams that represent clients in employment counseling and litigation. The firm has offices in Texas, California, and Florida, and represents clients from start-ups to Fortune 50 companies. Learn more about the firm at <http://www.munckwilson.com>.

Related People

- Kate LaQuay