

ED Roundtable Fair Chance Hiring Practices

5/31/18

Presented by: Maria “Alex” Alexander, Center for Living and Learning

1. Fair Chance/Ban the Box – <http://wagesla.lacity.org>
2. Criminal Background Checks – Brief Guidelines
3. Root and Rebound Employer Toolkit - https://objects-us-west-1.dream.io/employertoolkit/RR_employertoolkit_2016.pdf
4. Common Labor Code Violations in Nonprofits
 - Wage and hour violations
 - Volunteering at events and off the clock
 - Working during meal/rest periods
 - Credit Checks only allowed for certain types of positions since 2012



FAIR CHANCE INITIATIVE FOR HIRING LA

FACT SHEET

AN EMPLOYER WITH TEN (10) OR MORE EMPLOYEES IN THE CITY OF LOS ANGELES CANNOT INQUIRE INTO A JOB APPLICANT'S CRIMINAL HISTORY, BY ANY MEANS, UNLESS AND UNTIL A CONDITIONAL OFFER OF EMPLOYMENT HAS BEEN MADE TO THE APPLICANT.

EMPLOYMENT APPLICATION (if applicable)

Job postings & solicitations must inform Applicants that qualified individuals with Criminal Histories will be considered.

EXCEPTIONS FROM CERTAIN EMPLOYMENT APPLICATION PROCEDURES MAY APPLY. VISIT OUR WEBSITE FOR MORE INFORMATION.

CONDITIONAL OFFER OF EMPLOYMENT

This may only be conditioned on an assessment of the Applicant's Criminal History, if any, and the duties and responsibilities of the Employment position.

CRIMINAL BACKGROUND CHECK (if desired)

A Criminal History Report may include information regarding records of Conviction(s) of a misdemeanor or felony for which the Applicant was placed on probation, fined, imprisoned, or paroled.

INDIVIDUALIZED ASSESSMENT (if applicable)

An Applicant's qualifications must be considered in light of the Equal Employment Opportunity Commission "Green Factors":

- NATURE AND GRAVITY** harm caused by criminal conduct
- TIME** amount of time passed since convicted offense(s)
- JOB DUTIES AND RESPONSIBILITIES** essential functions, circumstances, and environment of the Employment position
- CONVICTIONS** arrests that do not lead to conviction cannot be considered in Employment decisions.
(See Rules & Regulations for more information.)

FAIR CHANCE PROCESS (if applicable)

An Employer must perform a written Individualized Assessment considering the responsibilities of the Employment position and the Applicant's Criminal History. If the Assessment effectively links specific aspects of the Criminal History with risks inherent to the job duties, an Employer must:

- ▶ provide the Applicant with written notice of the proposed Adverse Action, written assessment, supporting documentation, and the date the Applicant was notified.
- ▶ hold the job open for at least five (5) business days after the Applicant has been informed.
- ▶ allow the Applicant an opportunity to submit documentation while the job is held open.

An Applicant's documentation should include examples of relevant individualized evidence (e.g., explanation of circumstances, proof of rehabilitation, errors in the Criminal History, references, etc.) and must be reviewed by the Employer.

VISIT THE EEOC'S WEBSITE (<http://www.eeoc.gov/>) TO LEARN MORE ABOUT THE ENFORCEMENT GUIDANCE "GREEN FACTORS" AND DOCUMENTATION.

REASSESSMENT & FINAL DECISION (if applicable)

An Employer must review all documentation submitted by the Applicant, reassess the proposed Adverse Action in light of the information received, notify the Applicant of the final decision, and - if applicable - provide written notice of the Adverse Action, copy of the written reassessment, supporting documentation, & the date the Applicant is notified. An Employer must keep copies of all related records for three (3) years.



FOR MORE INFORMATION, CONTACT THE OFFICE OF WAGE STANDARDS:

1-844-WAGESLA (924-3752) | WAGESLA@LACITY.ORG | BCA.LACITY.ORG/FAIR-CHANCE



As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability and, upon request, will provide reasonable accommodations to ensure equal access to its programs, services, and activities.

City of Los Angeles

CALIFORNIA



ERIC GARCETTI
MAYOR

NOTICE TO APPLICANTS & EMPLOYEES FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE

This Employer is subject to the Fair Chance Initiative for Hiring Ordinance (FCIHO) (LAMC 189.00).

THESE ARE YOUR RIGHTS...

1. Employers cannot inquire about or seek information about an Applicant's Criminal History until after a Conditional Offer of Employment has been made to the Applicant*.

✓ This includes job solicitations and applications or during any conversations or interviews

2. If an Employer decides to rescind an offer of employment based on information discovered during the criminal background check, the Employer is required to perform an Individualized Assessment.

✓ Individualized Assessment - a written assessment that effectively links the specific aspects of the Applicant's Criminal History with risks inherent in the duties of the Employment position sought by the Applicant.

✓ If the offer is rescinded, the Applicant must receive:

- Written notification
- Copy of the Individualized Assessment, and
- Copies of any documentation used in the Employer's decision

3. The Applicant has the right to the Fair Chance Process.

✓ The Applicant has the opportunity to provide information or documentation to an Employer regarding the accuracy of his/her Criminal History or Criminal History Report or that should be considered in the Employer's assessment, such as evidence of rehabilitation or other mitigating factors.

✓ The Employer is required to hold the job open for at least five (5) days from the date notification of a rescinded offer of employment to allow an Applicant to submit such documentation, and, the Employer is required to review any documentation in order to reassess their decision.

FOR ADDITIONAL INFORMATION OR ASSISTANCE, CALL:

City of Los Angeles
Department of Public Works
Office of Contract Compliance
1149 S. Broadway Street, Suite 300
Los Angeles, CA 90015
Phone: (844) WagesLA – Email: WagesLA@lacity.org

City of Los Angeles

CALIFORNIA



ERIC GARCETTI
MAYOR

AVISO PARA SOLICITANTES Y EMPLEADOS ORDENANZA DE LA INICIATIVA DE OPORTUNIDAD JUSTA PARA LA CONTRATACIÓN

Éste empleador está sujeto a la Ordenanza de la Iniciativa de Oportunidad Justa Para la Contratación (Fair Chance Initiative for Hiring Ordinance) (FCIHO) (LAMC 189.00).

ÉSTOS SON SUS DERECHOS...

- 1. Los empleadores no deben preguntar al solicitante sobre los antecedentes penales hasta después de que se le ha dado al solicitante una oferta condicional de empleo.**
 - ✓ Ésto incluye solicitudes y solicitudes de empleo o durante cualquier tipo de conversaciones o entrevistas
- 2. Si el empleador decide revocar la oferta de empleo como resultado de la investigación de antecedentes, el empleador está obligado a realizar una evaluación individualizada.**
 - ✓ Evaluación Individualizada – Un análisis por escrito de las funciones y responsabilidades del trabajo, los antecedentes penales del solicitante, y cualquier otro factores que pueden afectar a la decisión de contratación.
 - ✓ Si se retiró la oferta, el solicitante debe recibir:
 - Un aviso por escrito
 - Una copia de la evaluación individual, y
 - Copias de todos los documentos que el empleador utilizó a llegar a la decisión
- 3. El solicitante tiene el derecho al proceso de la Oportunidad Justa.**
 - ✓ El solicitante tiene cinco (5) días desde la fecha cuando recibió el aviso de retiro de oferta para juntar y entregar documentos que muestra la prueba de rehabilitación y/o errores en la investigación de antecedentes. Se requiere que los empleadores examinen cualquier documentación presentada para reexaminar su decisión.

PARA MÁS INFORMACIÓN O ASISTENCIA, PUEDE LLAMAR A:

City of Los Angeles
Department of Public Works
Office of Contract Compliance
1149 S. Broadway Street, Suite 300
Los Angeles, CA 90015

Teléfono: (213) 847-2625 – Email: WagesLA@lacity.org

*La nota: No todos los solicitantes/empleados están cubierto bajo el FCIHO. Consulte con la ordenanza (LAMC 189.00) para más detalles.



FAIR CHANCE INITIATIVE FOR HIRING ORDINANCE (FCIHO) INDIVIDUAL ASSESSMENT and REASSESSMENT FORM



INFORMATION

Employer Name:	Applicant Name:
Position Applied For:	Date of Conditional Offer:
Date of Criminal History Report:	Individual Assessment Performed by:
Date of Assessment:	Date of Reassessment (if applicable):

The following factors were considered, as required by Section 189.03 of the Los Angeles Municipal Code or Section 10.48.3 of the Los Angeles Administrative Code, before making our determination:

1. The specific duties and responsibilities of the job, which are:

- a) _____
- b) _____
- c) _____
- d) _____

2. Description of the criminal conduct and why the conduct is of concern.

3. How long ago did the criminal activity occur:

4. Age at the time of last criminal activity:

5. Activities since criminal activity such as work experience, job training etc.:

- a) _____
- b) _____
- c) _____
- d) _____

Based on the factors above, we are considering rescinding our offer of employment because:

Describe how there is a link between the specific aspects of the Applicant's Criminal History with risks inherent in the duties of the Employment position.

To be completed for a Reassessment:

1. Was there an error made in the Criminal History Report?

2. Evidence of rehabilitation and good conduct, which is:

- a) _____
- b) _____
- c) _____
- d) _____

Evidence includes documents that the Applicant attended school, religious institution, job training, or counseling; or is involved with the community. They can include letters from people who know them, like teachers, counselors, supervisors, clergy, and parole or probation officers.

Based on the evidence provided, we are rescinding/not rescinding (circle one) our offer of employment because:

Note: Employers shall retain all records and documents related to Applicants' Employment applications and the written assessment and reassessment performed for a period of three years following the receipt of an Applicant's Employment application.

Comparing the Laws: CA Fair Chance Bill vs LA City Municipal Code

	CALIFORNIA (Govt Code 12952)	LA CITY (LA Muni Code 189.01 – 189.10)
UNLAWFUL FOR EMPLOYER...	5+ employees	10+ employees
Questions about conviction history on application before conditional job offer	●	●
To ask about conviction history before conditional job offer	●	●
To consider conviction history before conditional job offer	●	●
To consider or talk about		
- Arrest not followed by conviction	●	●
- Participation in a "diversion program"		
- Sealed, dismissed, expunged, or statutorily eradicated convictions		
To interfere with job seeker exercising their rights under Fair Chance Law	●	●
EMPLOYER CAN do background check after conditional job offer	●	●
Employer MUST:		
Employers MUST state in all advertisements that they will consider qualified applicants with criminal histories	N/A	●
Conduct "individualized assessment" if they want to reject applicant "Individualized Assessment" means: Does the applicant's conviction history have a direct and adverse relationship with the specific duties of the job that justifies denying the applicant the position. Look at:		
- nature and gravity of the offense or conduct	●	●
- time since offense/conduct/jail-time etc.		
- nature of the job held or sought		
Document "Individualized Assessment" in writing	N/A	●
Put the results of "individualized assessment" in writing	N/A	●
Notify the applicant of the preliminary decision in writing, if applicant disqualified	●	●
Notification MUST include:		
- The disqualifying conviction(s)	●	●
- A copy of the conviction history report, if any		
- Info about applicant's right to respond, deadline to respond		
Notification MAY , but is not required to, justify or explain the employer's reasoning for disqualifying applicant	●	●
Give applicant at least 5 business days to respond	●	●
Give applicant 5 additional days to respond if challenging the accuracy of conviction history	●	Not specified
Consider information submitted by applicant before making final decision	●	Not specified
If, after considering applicant's new information, employer still reject's applicant, then employer:		
- May offer justification (but doesn't have to)	●	Not specified
- Notify of employer's policy to challenge decision		
- Notify of right to file a complaint with the department		
Fair Chance Hiring Law DOES NOT APPLY:		
- To a position for which a state/local agency required by law to do background check.	●	●
- To a position with a criminal justice agency		
- To a position as a Farm Labor Contractor		
- To a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history.		
Fair Chance Hiring Law DOES NOT APPLY IF:		
- Applicant would be required to possess/use a firearm in job		
- An individual who has been convicted of a crime is prohibited by law from holding the position sought by the Applicant, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated or judicially dismissed following probation.		●
- An Employer is prohibited by law from hiring a person with conviction		
REMEDIES are in ADDITION to other laws (including local ordinances)	●	●
Penalties: If proven that the employer has broken any part of the LA Muni law, they might suffer these penalties. The administrative fine paid by an Employer for a violation of this article may be awarded by the City to the Applicant or Employee up to a maximum of \$500 per violation.		
- \$500 for the first violation	N/A	●
- up to \$1,000 for the second violation		
- up to \$2,000 for the third and subsequent violations		

Comparing the Laws: CA Fair Chance Bill vs LA City Municipal Code

Legal Code

California:

Gov 12952.

(a) Except as provided in subdivision (d), it is an unlawful employment practice for an employer with five or more employees to do any of the following:

(1) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history.

(2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the employer has made a conditional offer of employment to the applicant.

(3) To consider, distribute, or disseminate information about any of the following while conducting a conviction history background check in connection with any application for employment:

(A) Arrest not followed by conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of Section 432.7 of the Labor Code.

(B) Referral to or participation in a pretrial or posttrial diversion program.

(C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.

(4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to prevent an employer from conducting a conviction history background check not in conflict with the provisions of subdivision (a).

(c) (1) (A) An employer that intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment described in this paragraph, the employer shall consider all of the following:

(i) The nature and gravity of the offense or conduct.

(ii) The time that has passed since the offense or conduct and completion of the sentence.

(iii) The nature of the job held or sought.

(B) An employer may, but is not required to, commit the results of this individualized assessment to writing.

(2) If the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification may, but is not required to, justify or explain the employer's reasoning for making the preliminary decision. The notification shall contain all of the following:

(A) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer.

(B) A copy of the conviction history report, if any.

(C) An explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both.

(3) The applicant shall have at least five business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. If, within the five business days, the applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history report that was the basis for the preliminary decision to rescind the offer and that the applicant is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice.

(4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision.

(5) If an employer makes a final decision to deny an application solely or in part because of the applicant's conviction history, the employer shall notify the applicant in writing of all the following:

(A) The final denial or disqualification. The employer may, but is not required to, justify or explain the employer's reasoning for making the final denial or disqualification.

(B) Any existing procedure the employer has for the applicant to challenge the decision or request reconsideration.

(C) The right to file a complaint with the department.

(d) This section does not apply in any of the following circumstances:

(1) To a position for which a state or local agency is otherwise required by law to conduct a conviction history background check.

(2) To a position with a criminal justice agency, as defined in Section 13101 of the Penal Code.

(3) To a position as a Farm Labor Contractor, as described in Section 1685 of the Labor Code.

(4) To a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history. For purposes of this paragraph, federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203), pursuant to the authority in Section 19(b) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203).

(e) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.

(f) For purposes of this section:

(1) "Conviction" has the same meaning as defined in paragraphs (1) and (3) of subdivision (a) of Section 432.7 of the Labor Code.

(2) Notwithstanding paragraph (1), the term "conviction history" includes:

(A) An arrest not resulting in conviction only in the specific, limited circumstances described in subdivision (f) of Section 432.7 of the Labor Code, when an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, may ask an applicant for certain positions about specified types of arrests.

(B) An arrest for which an individual is out on bail or his or her own recognizance pending trial.

Date

Applicant Name
1234 ABCD St.
Los Angeles, CA 90001

Dear Applicant,

After a criminal background check was performed, (company name) has determined to rescind our offer of employment for the position of (job position). See the attached copy of the Individualized Assessment for a more detailed explanation.

As required by the City of Los Angeles' Fair Chance Initiative for Hiring Ordinance (FCIHO) (LAAC 10.48 / LAMC 189.00 – select one), we are providing you with copies of the following documentation:

- Written Notice to rescind offer of employment (this letter)*
- Individualized Assessment, AND
- Any documentation used to make this decision (e.g. Criminal History, Criminal History Report, Criminal reference, etc.)

You have (enter # of days) business days** from the receipt of this notice to provide information or documentation regarding the accuracy of your Criminal History or Criminal History Report, including but not limited to, evidence of rehabilitation or errors in the Criminal History Report. If we receive your information during this time period, **we are required** to reassess our decision. You will be notified of our final decision and provide you with a copy of our written reassessment. If we do not hear from you within this time period, this decision will be final.

Sincerely,

Employer Human Resource Contact Person
Employer Company Name
Employer Address
Employer Contact Phone Number

*If you have any questions/concerns about this notification or the FCIHO, please contact:

City of Los Angeles
Department of Public Works
Office of Wage Standards
1149 S. Broadway Street, 3rd Floor
Los Angeles, CA 90015
Phone: (844) 924-3752
wagesla@lacity.org

**Must be at least five (5) business days

POST IN A CONSPICUOUS PLACE AT ANY WORKPLACE OR JOB SITE. VIOLATORS SHALL BE SUBJECT TO PENALTIES.



OFFICIAL NOTICE

Los Angeles Minimum Wage

Rate Effective July 1, 2017



\$10.50 PER HOUR

Employers with 25 or fewer Employees

\$12.00 PER HOUR

Employers with 26 or more Employees

All Employers are required to pay Employees a new minimum wage according to the Los Angeles Minimum Wage Ordinance. The minimum wage rate will be adjusted every year according to Los Angeles Minimum Wage Ordinance Section 187.02. Certain exemptions and deferrals may be available.

Effective Date:	Employers with 26 or more Employees:	Employers with 25 or fewer Employees or approved Non-Profit Corporations with 26 or more Employees to pay a deferred rate:
7/1/2017	\$12.00	\$10.50
7/1/2018	\$13.25	\$12.00
7/1/2019	\$14.25	\$13.25
7/1/2020	\$15.00	\$14.25
7/1/2021	\$15.00	\$15.00

The Los Angeles Office of Wage Standards Ordinance grants authority to the Bureau of Contract Administration, Office of Wage Standards to investigate possible violations, inspect workplaces, interview employees, and review payroll records. The Office of Wage Standards will enforce the City's Minimum Wage Ordinance for violations including but not limited to: 1) failure to pay the Los Angeles minimum wage; 2) failure to comply with notice, posting, and payroll records requirements; and 3) retaliation. The Los Angeles Municipal Code (LAMC) Section 188.04 protects Employees from any discrimination or retaliation for exercising their rights to receive the City's minimum wage.

Los Angeles Paid Sick Leave

Effective July 1, 2017

All Employers will be required to provide paid sick leave according to the Los Angeles Minimum Wage Ordinance. The paid sick leave will be provided to all Employees who work at least two hours in a particular week in the City of Los Angeles for the same Employer for 30 days or more within a year.

Entitlement	
Front-Loading	At least 48 hours provided either at the beginning of each year of employment, calendar year, or 12-month period; OR -
Accrual	One (1) hour of paid sick leave for every thirty (30) hours worked.
72-Hour Cap	Accrued unused paid sick leave shall carry over to the following year of employment and may be capped at a minimum of 72 hours; however, an Employer may choose no cap or a higher cap.
Separation from Employment	An Employer is not required to provide compensation to an Employee for accrued or unused sick days at separation from employment.
Reinstatement	If an Employee is rehired within a year of separation from employment, previously accrued and unused paid sick leave shall be reinstated.

Usage	
When	An Employee may use paid sick leave beginning on the 90th day of employment.
How	An Employer shall provide paid sick leave upon the oral or written request of an Employee for themselves, a family member, or for any individual related by blood or affinity. Qualified use of time can be found in LAMC Section 187.04(G).
	The use of paid sick leave may be limited to 48 hours leave annually.

Los Angeles Municipal Code Section 187.06 protects Employees from any discrimination or retaliation for exercising their rights to receive the City's paid sick leave.

For more information, please contact the Office of Wage Standards at 1-844-WAGESLA (924-3752) or email wagesla@lacity.org or visit <http://wagesla.lacity.org/>.

As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure equal access to its programs, services, and activities.