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LOS ANGELES FAIR CHANCE INITIATIVE FOR HIRING

On December 9, 2016, Los Angeles Mayor Eric Garcetti signed the Los Angeles Fair Chance Initiative for Hiring (Ban the Box) ordinance (the "Ordinance") that bars certain employers in the City of Los Angeles (the "City") from asking job applicants about their criminal conviction history until the employer makes a conditional offer of employment to the applicant. The Ordinance takes effect January 1, 2017.

The Ordinance applies to all employers located or doing business in the City with ten or more employees (including owners) who each perform at least two hours of work on average each week within the geographical boundaries of the City of Los Angeles.

The Ordinance is known as the "Ban the Box" law since it bans the "check box" on job applications regarding criminal convictions. The Ordinance also prohibits employers from inquiring about such convictions by any other means until a conditional employment offer is made.

Once a conditional offer of employment has been made, the employer must make a written assessment of an applicant's criminal history. In performing the assessment, the employer is required to consider the factors promulgated by the United States Equal Employment Opportunity Commission ("EEOC") as well as any other factors set forth by the rules or guidelines of the Department of Public Works, Bureau of Contract Administration ("DPW") to evaluate and determine links between the applicant's criminal history and the risks inherent in the duties of the position sought by the applicant. If, following the assessment, the employer does not hire the applicant, the employer may not fill the position for a period of at least five business days after the applicant is informed of the proposed adverse action. During this period, the applicant may choose to engage in the "Fair Chance Process," which allows the applicant to provide any information or documentation for the employer's consideration, such as evidence of rehabilitation or other mitigating factors. If the applicant presents new information, the employer must then complete a written reassessment of the proposed adverse action against the applicant. If the employer proceeds with the adverse action against the applicant, the employer must provide the applicant with a copy of the reassessment.

The Ordinance requires employers to state in all solicitations or advertisements seeking applicants for employment that the employer will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of the Ordinance.

The Ordinance requires employers to post a notice informing applicants of the provisions of the Ordinance in a conspicuous place at every workplace, job site, or other location in the City under the employer's control and visited by applicants. The Ordinance also requires employers to send a copy of such notice to each labor union or representative of workers with which the employer has a collective bargaining agreement that is applicable to employees in the City.

Employers must retain records and documents related to employment applications and the written assessments and reassessments for three years following receipt of the employment application.

Violations of the Ordinance carry a penalty of up to \$500 for the first violation, up to \$1,000 for the second violation, and up to \$2,000 for the third and subsequent violations. Fines will not be imposed until July 1, 2017. Until that time the DPW will issue written warnings to employers.

Applicants may also file civil lawsuits to enforce their rights under the Ordinance, but only after notifying the DPW and completing the administrative enforcement process or receiving a hearing officer's decision regarding an alleged violation.

The Ordinance does not apply to (a) employers required by law to obtain information regarding a conviction of an applicant, (b) jobs which require an employee to possess or use a firearm, (c) jobs where a person convicted of a crime is prohibited by law from holding the job, regardless of whether that conviction has been expunged, judicially ordered sealed, statutorily eradicated or judicially dismissed following probation and (d) jobs where the employer is prohibited by law from hiring an applicant who has been convicted of a crime.

Employers located or doing business in Los Angeles should review their employment application forms and hiring practices to ensure criminal history questions are not asked until a conditional offer of employment is made.

Sincerely,
Citron & Deutsch

