

## Los Angeles Becomes Latest City to Ban the Box

On January 22, Los Angeles became the latest in a growing list of jurisdictions to limit pre-hire inquiries into a job applicant’s criminal history. Joining other cities like San Francisco and New York City that have banned the box, Los Angeles will restrict employers from inquiring into a potential hire’s criminal history during the application process. Under a new ordinance, private employers with at least 10 employees will be barred from asking about a job applicant’s criminal history prior to a conditional offer of employment. Employers should review their applicant screening protocols and hiring process to ensure compliance.

### Background

Since Hawaii first banned conviction questions from job applications in 1998, states and cities across the country have adopted so-called “ban-the-box” or “fair chance” laws with increasing frequency. The laws require employers to delete the check-off box on their job application forms that asks whether prospective employees have a criminal record. While they do not prevent employers from considering an individual’s criminal history in making employment decisions, they generally curb the ability of prospective employers to consider it at the initial stages of the hiring process.

What began as an effort to modify public-sector hiring practices has progressively spread to the private sector as a growing number of states and major cities – such as San Francisco, New York, Philadelphia and Seattle – enacted broader restrictions on pre-hire criminal history inquiries. (See, for example, our [October 8, 2014 FYI In-Depth](#) and [April 8, 2016 For Your Information](#).) Now, nine states, the District of Columbia and more than 25 cities and counties across the country have ban-the-box laws in place that limit private employers’ use of criminal history and background checks for employment purposes.



**Comment.** Effective January 1, Connecticut became the latest state to ban the box. With certain limited exceptions, its new “Fair Chance Employment” law ([Public Act 16-83](#)) prohibits both public and private employers from asking questions about prior arrests, criminal charges or convictions on an *initial* employment application. While the law does not prohibit criminal history inquiries prior to a conditional job

offer, local ordinances in municipalities like Hartford and New Haven impose greater restrictions on city agencies and vendors.

## Los Angeles Ban-the-Box Law

On December 9, 2016, the City of Los Angeles enacted the “Fair Chance Initiative for Hiring (Ban the Box)” ([Ordinance No. 184652](#)), limiting the use of criminal history information by employers that are located or doing business in the city. The new ordinance took effect on January 22, 2017, with a six-month grace period before penalties for noncompliance will be levied.

Unlike San Francisco’s ban-the-box law that restricts questions about criminal history on job applications and generally prohibits criminal history inquiries until after the *initial* job interview, the Los Angeles ordinance prohibits employers from inquiring about criminal histories *until a conditional job offer has been made*.

### Who’s Covered

The new law broadly construes “applicant for employment” to include any individual who submits an application or other documentation for: full- or part-time, contract, contingent, commission, temporary or seasonal work; work through an employment agency to be performed in Los Angeles; and any form of paid or unpaid vocational or educational training.

Employers covered under the new law include any individual, firm, corporation, partnership, labor organization, group of persons, association or other organization that is located or doing business in the city and employs 10 or more employees. Job placement and referral agencies and other employment agencies are covered as well. However, public employers – the city of Los Angeles, and other local, state or federal government units – are excepted.

### New Restrictions

The new law prohibits most private employers from conducting criminal background checks or inquiries concerning a job applicant prior to a conditional job offer. This effectively bars employers from:

1. Asking about an applicant’s criminal history on a job application
2. Inquiring about or requiring disclosure of criminal history during the interview process
3. Performing a pre-offer criminal background check

For these purposes, criminal history includes information regarding any felony or misdemeanor conviction from any jurisdiction for which the person was placed on probation, fined, imprisoned or paroled.

The law includes four limited exceptions to the general prohibition against criminal history inquiries at the initial stages of the hiring process. Employers are exempt only if: required by law to obtain conviction information; prohibited by law from hiring an applicant with a record; employment would require possession or use of a firearm; or a criminal conviction would be prohibited by law from holding the position sought.

### Additional Restrictions on California Employers

Legislation ([AB 1843](#)) that took effect on January 1 generally prohibits both public and private employers in California from inquiring into an applicant’s juvenile convictions or using them as a factor in determining any condition of employment. The law contains certain limited exceptions for law enforcement and health care facilities.

## Fair Chance Process

While the city's ban-the-box law allows criminal background checks and inquiries into a potential hire's criminal history once a conditional offer of employment has been made, it imposes a number of requirements on an employer that seeks to base a hiring decision on the information it receives. If, as a result of those inquiries, the employer decides to take adverse action, it must first complete a "written assessment" that ties the applicant's criminal history to the risks inherent in the prospective job duties. At a minimum, the employer must consider the factors identified by the Equal Employment Opportunity Commission (e.g., conduct an individualized assessment) and any rules and regulations issued by the city's Department of Public Works, Bureau of Contract Administration (the "Designated Administrative Agency" or "DAA"). (See our [May 11, 2012 For Your Information](#) for more information on EEOC guidance on employers' use of arrest and conviction records.)

After completing the assessment, the employer must follow a "Fair Chance Process" before withdrawing the job offer or refusing to hire. That process requires the employer to:

1. Provide the applicant with written notice, a copy of the written assessment, and any other information or documentation supporting the employer's proposed adverse action
2. Give the applicant at least five business days to respond before taking any adverse action or filling the job
3. Consider any information or documentation the applicant provides, and perform a "written reassessment" of the proposed adverse action. If, after the reassessment, the employer still intends to take adverse action, it must notify the applicant and provide the candidate with a copy of the written reassessment

**Comment.** Before conducting a criminal background check, employers should ensure they are complying with any consent and notification requirements of federal and state Fair Credit Reporting Acts. Employers that use a consumer reporting agency for that purpose should run the Fair Chance Process concurrently with the pre-adverse and adverse action requirements of those laws.

## Recordkeeping, Notice and Posting Requirements

Employers must maintain documents related to applicants' employment applications, any written assessments and reassessments for three years following receipt of the application. Employers must state in all job advertisements and solicitations for employment that they will consider qualified applicants with criminal histories for employment "in a manner consistent with the requirements of this [ordinance]." In addition, employers must post a [notice](#) of the law's provision in a conspicuous place at every workplace, job site or other location in Los Angeles that is under their control and visited by applicants. A copy of the notice must also be sent to labor unions that represent their workforce.

## Retaliation

The ordinance makes it unlawful for an employer to discharge, reduce pay or take any adverse employment action against any employee for complaining to the city about the employer's noncompliance or anticipated noncompliance with the new law, or for opposing any practice made unlawful by it, participating in related proceedings, or seeking to enforce or otherwise assert any rights under the ordinance.

## Enforcement and Penalties

An individual may bring a civil lawsuit against the employer for violation of the new law, but only if the individual made a timely administrative complaint to the DAA and the administrative enforcement process has been

completed or a hearing officer's decision has been rendered, whichever is later. The lawsuit must be filed within one year of the completion of the DAA's enforcement process or the hearing officer's decision. DAA rules, which still need to be established, will govern the administrative process for investigation, enforcement and appeals.

Beginning July 1, 2017, the DAA may fine employers up to \$500 for the first violation, up to \$1,000 for the second, and up to \$2,000 for the third and subsequent violations of the law. Fines for recordkeeping and notice and posting violations are capped at \$500 for each violation. Prior to July 1, 2017, the DAA will issue written warnings – but no fines – to employers that violate the ordinance.

## In Closing

Los Angeles' ban-the-box law places new constraints on private employers' hiring and applicant screening practices. Employers that are located or doing business in Los Angeles will want to review their current pre-employment practices – and their employment applications in particular – and make any necessary revisions to ensure that they are in compliance and train HR staff and others involved in the hiring process on the new restrictions.

### Authors

Nancy Vary, JD

Abe Dubin, JD

### Produced by the Knowledge Resource Center

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive or email [fyi@conduent.com](mailto:fyi@conduent.com).

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.