


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: November 16, 2015

TO: Honorable Members of the Economic Development Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No: 14-0746
Assignment No: 15-11-0889

Ban the Box – Fair Chance Initiative for Hiring

SUMMARY

On June 6, 2014, a Motion (Price-Koretz-Wesson) (Attachment 1) was introduced instructing our Office to: 1) work with the Economic and Workforce Development Department, Public Works Department, City Attorney, Personnel Department and community advocates to determine the feasibility of establishing a City of Los Angeles Fair Chance Initiative (Ban the Box) to remove barriers to employment for individuals with a criminal record; and, 2) examine Ban the Box policies in other cities, including procedural implementation, specific restrictions and exemptions. The Motion was considered by the Economic Development Committee (Committee) on October 14, 2014 and was continued to a future date.

In response to the Motion, our Office met with City departments, including City Attorney, Economic and Workforce Development Department, and the Personnel Department to evaluate the feasibility of establishing a Ban the Box policy. Additionally, our Office reviewed Ban the Box policies in other jurisdictions. To date, the federal government, 19 states, and numerous cities throughout the country have enacted “Ban the Box” laws that prohibit employers from asking job applicants to disclose criminal history in the initial job application or job interview. While Ban the Box laws do not prevent employers from considering an individual’s criminal history, they require that such questions be delayed until later in the hiring process. Furthermore, Ban the Box policies only apply to employers who choose to inquire into an applicant’s or employee’s conviction history.

Additionally, all Ban the Box policies we examined include exemptions for positions related to law enforcement and children, and positions where federal or state law require a criminal history background investigation.

Pursuant to State law, the City has removed criminal conviction questions from job applications for City employment. The City Attorney has indicated that expanding the City’s Ban the Box policy to apply to city contractors and vendors and/or private employers, similar to other cities, is permissible. The City Attorney has noted that the San Francisco Fair Chance Ordinance has set precedent in its expansion to cover all City contractors and private employers with over 20 employees. The cities of Compton and Richmond are the only other cities in California that apply Ban the Box laws to city contractors.

On November 2, 2015, the United States President announced a “Ban the Box” policy for federal hiring and hiring by federal contractors. The President has directed the Office of Personnel Management to modify its rules to delay inquiries into criminal history to later in the hiring process.

Should the Council wish to expand the Ban the Box policy to apply to contractors and/or private employers, an ordinance would need to be adopted. The ordinance could include provisions to require City contractors and/or private employers to remove questions relating to criminal history from job applications and to require any questions related to criminal history be made after it has been determined that the candidate meets the minimum job qualifications.

In addition, the Council may wish to consider other relevant provisions to include in the ordinance such as those listed in Table 1:

Table 1

Provisions	Definition
Type of Provision	-Delaying inquiries into a job applicant's criminal history until later in the hiring process.
Applicability	-City Contractors -Private Employers
Exemption For Small Businesses	-Number of Employees (i.e., 20 employees or less) -Gross Receipts (Less than \$100,000)
Point at which criminal history questions may be asked about the job applicant.	After it has been determined that the applicant has met the minimum qualifications for the job; or After a conditional offer of employment has been made.
Monitoring and Compliance	-Designate an office or agency to oversee and monitor implementation of a Ban the Box policy.
Penalties	Establish a penalty structure such as: First Violation: \$50 per incident Second Violation: \$100 per incident Subsequent Violations: \$500 per incident

DISCUSSION

In recent years, federal, state and local government agencies throughout the United States have adopted laws and/or implemented policies that prohibit their respective jurisdictions from requiring job applicants to disclose criminal conviction history in the initial steps of the hiring process. Most of these jurisdictions require that any inquiry into a job applicant's criminal history be made only after a conditional offer of employment has been made. Some cities prohibit questions about criminal convictions even after a conditional offer of employment has been made. Other cities require that if a conviction is disclosed subsequent to making a conditional employment offer, the city conduct an analysis of such conviction and provide the job applicant an opportunity to explain. Some jurisdictions require inquiries into an applicants' criminal history only when mandated by federal or state law.

Below is an overview of what the State of California, City of Los Angeles and other states and cities have adopted with regard to Ban the Box policies.

California Labor Code 432.9 (Assembly Bill 218)

Assembly Bill (AB) 218 (California Labor Code Section 432.9; Attachment 2) became effective on July 1, 2014, to prohibit state and local agencies from inquiring about criminal convictions during the employment application process for most positions until the agency has determined that the applicant has met the minimum employment qualifications as stated in any notice issued for the position.

- AB 218 exempts state and local agencies that are required by law to conduct a conviction history background check, for positions within a criminal justice agency, or any criminal justice agency on a contract basis or on loan from another government entity.
- AB 218 allows government agencies to conduct a conviction history background check after it has been determined that the applicant meets the minimum employment qualifications.
- AB 218 does not apply to private employers.
- AB 218 is silent on whether local jurisdictions can expand its provisions to private employers.

California Labor Code

Prior to the passage of AB 218, the California Labor Code prohibited state and local public agencies and private employers from inquiring about arrests or detentions that did not result in a conviction (California Labor Code Section 432.7; Attachment 2).

- Section 432.7 prohibits public agencies and private employers from asking a job applicant about an arrest or detention not leading to a conviction.
- Section 432.7 exempts health facilities that have positions with access to patients, drugs and medication.

City of Los Angeles Ban the Box Policy

Pursuant to the enactment of AB 218, the City Personnel Department issued a letter dated April 14, 2014 (Attachment 3) to City departments informing them of the requirement to delay questions regarding criminal history until it has been determined that the job applicant has met the minimum employment qualifications. At this time, review of job applicant criminal history is made after an examination has been completed and an eligible list prepared.

According to the Policies of the Personnel Department for the City of the Los Angeles (Section 1.3.b), it is the policy of the City to employ rehabilitated offenders for jobs that would not be in conflict with their conviction records. An applicant's records are evaluated on the basis of the following factors:

- Whether the law proscribes employment in the affected position:
- Worker's Compensation fraud will result in disqualification.
- Nature, seriousness and the circumstances under which the conviction occurred.
- Age of the person at the time of conviction and time elapsed since conviction.
- Number of convictions.
- Relationship of conviction to the affected position.
- Evidence of rehabilitation and maturing.
- Truthfulness in admitting the previous records.
- Any other factor relevant to the individual's suitability.

The City's Ban the Box policy does not apply to contractors or private employers. In California, the Cities of Compton and Richmond and City/County of San Francisco have expanded their policies to city contractors. San Francisco is the only City in California with a Ban the Box policy that applies to private employers (20 or more employees).

Community Input

City of Los Angeles advocates of Ban the Box policies report that delaying criminal conviction questions, or completely removing the question for certain positions, could be beneficial as it would lead to job creation, reduced recidivism and reduced crime. Business representatives have expressed concerns about the impact of a Ban the Box policy on small businesses. Healthcare advocates were concerned about the impact to health facilities given employees' access to patients, drugs and medications.

A Ban the Box policy that applies to private employers may require such employers to revise their hiring process including the use of new applications that do not include questions about criminal history. While some jurisdictions only remove criminal conviction questions from job applications (the initial step of the hiring process), others remove all inquiries related to criminal history until a conditional job offer has been made.

Should the City Council wish to expand the Ban the Box policy to apply to contractors and/or private employers, the City Attorney should be requested to prepare an ordinance for adoption and a monitoring and compliance mechanism would have to be established.

Ban the Box Policies on Other Cities (Attachment 4)

In some jurisdictions, Ban the Box laws and policies apply only to public and licensing agencies, while in others, the laws and policies apply to government contractors and private employers. In cases where criminal convictions are considered, some cities require that the conviction meet certain criteria prior to making an adverse hiring decision. These criteria may include "job-relatedness," time passed since the conviction, and/or rehabilitation.

San Francisco Fair Chance Ordinance

As of August 13, 2014, the Fair Chance Ordinance (FCO) requires employers to follow strict rules regarding applicants' and employees' arrest and conviction records and related information. The ordinance applies to: 1) employees and job applicants within the City and County of San Francisco, if the current or prospective employer has 20 or more employees (worldwide); or, 2)

job applicants and employees who work within the geographic boundaries of San Francisco and who: a) would be performing work under service contract with the city; or b) who would be performing work at a site leased from the City.

The ordinance prohibits covered employers from asking about arrest or conviction records on job applications. Additionally, the ordinance prohibits covered employers from ever considering the following:

- An arrest not leading to a conviction, except for unresolved arrests.
- Participation in a diversion or deferral of judgement program.
- A conviction that has been dismissed, expunged, otherwise invalidated or inoperative.
- A conviction in the juvenile justice system.
- An offense other than a felony or misdemeanor, such as an infraction.
- A conviction that is more than seven years old.

The ordinance also includes the following requirements for employers:

- State in all job solicitations/ads that qualified applicants with arrest and conviction records will be considered for the position in accordance with the Fair Chance Ordinance.
- Fair Chance Notice must be conspicuously posted in every workplace or jobsite under the employer's control.
- Prior to taking adverse action against an applicant such as a decision to not hire, discharge or promote based on a prior conviction, the applicant must be given the opportunity to present evidence that the information is inaccurate, rehabilitation, or other mitigating factors.

The San Francisco FCO provides that where federal or state law imposes a criminal history requirement that conflicts with a requirement of the Fair Chance Ordinance, the federal or state law will apply.

Compton, California

On April 5, 2011, the Compton City Council adopted a policy to prohibit discrimination and prejudice against persons with criminal histories in the City's employment process by complying with state and federal laws that prohibit certain uses of arrest or conviction records as a way to exclude an applicant from employment. This policy also applies to city contracts.

Washington, D.C.

In Washington D.C., as in California, employers are prohibited from asking about arrest history. Additionally, private employers with 10 or more employees may ask about criminal convictions after a conditional offer of employment has been made. Washington, D.C. exempts employers that provide programs, services, or direct care to minors, or vulnerable adults, positions required by law to consider criminal history in the hiring process and the courts. Job applicants whose rights are violated may file an administrative complaint with the D.C. Commission on Human Rights. If the Commission finds a violation, the Commission may impose monetary penalties ranging from \$1,000 to \$5,000 depending on the employer's number of employees.

State of Illinois and City of Chicago

State of Illinois and the City of Chicago Ban the Box policies also apply to private employers. The state law applies to employers with 15 or more employees. The Chicago ordinance applies to all private employers regardless of size. Employers may only inquire about criminal history after the applicant has been selected for an interview by the employer or until a conditional offer of employment has been made. Violations of the city ordinance could result in fines ranging from \$100 to \$1,000 for each offense.

City of Baltimore, Maryland

The City of Baltimore prohibits employers from conducting a criminal record check before job applicants are given a conditional offer of employment. The law applies to employers with 10 or more full time employees. Employers that provide programs, services, or direct care to minors or to vulnerable adults are allowed to conduct criminal background checks prior to a conditional offer of employment. Complaints are submitted to the Community Relations Commission and any employer found in violation could be subject to a fine of \$500, 90 days in jail or both.

New York City, New York

On October 27, 2015, the City of New York enacted the Fair Chance Act which prohibits: 1) job advertisements that make reference to statements such as “no felonies,” or “must pass background check,” and 2) any questions about criminal history on job applications and during job interviews, until a conditional offer of employment has been made. This law applies to all employers in New York City with four or more employees. The law does not apply to police and peace officer positions or any positions required by law to undergo a background check. Employers are required to notify job applicants and provide them with an analysis of criminal history. Similar to Washington D.C., if an employer fails to comply with this law, that employer would be liable for a minimum fine of \$1,000. The Finance Division of the New York City Council reports that this law would not result in a fiscal impact.

Monitoring and Compliance

With regard to enforcement and compliance, San Francisco established the Office of Labor Standards Enforcement (OLSE) to ensure compliance with the Fair Chance Ordinance. If the OLSE determines that an employer has violated the ordinance, the first violation could result in a warning; a second violation could result in an administrative penalty of up to \$50 and any subsequent violations could result in fines of up to \$100 for each individual whose rights are violated.

OLSE may also bring civil action against an employer. Potential outcomes include reinstatement, back pay, benefits and pay unlawfully withheld, liquidated damages of \$50 per individual for each day that the individual’s rights were violated under the Fair Chance Ordinance.

In cities such as New York and Washington D.C., violations of Ban the Box are reported to the Human Relations Commission. Fines for violations of Ban the Box policies in Washington D.C., Chicago and Baltimore could range from \$50 to \$1,000 per violation.

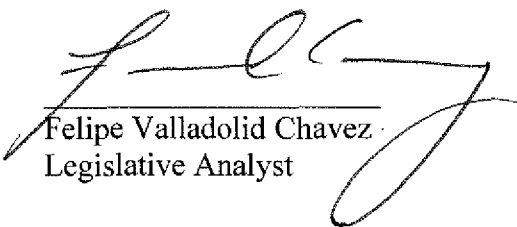
Next Steps

Should the Council wish to expand its Ban the Box policy to apply to City contractors and/or private employers, Council guidance should be provided to staff to prepare a draft ordinance that prohibits employers from asking criminal conviction questions on job applications. In addition, how the City would monitor and ensure compliance with a proposed Ban the Box ordinance would need to be further discussed.

RECOMMENDATIONS:

Should the Council wish to expand the Ban the Box policy to apply to contractors and/or private employers, the Council should take the following actions:

- 1) Adopt the Motion and determine which provisions, if any, to include in the ordinance, such as, applicability, employee thresholds for private employers, exemptions such as child care facilities, the point at which questions regarding criminal history may be asked, and monitoring and compliance; and,
- 2) Request the City Attorney to prepare and present an ordinance to require City contractors and/or private employers to remove questions relating to criminal history from job applications and to require any questions related to criminal history be made until it has been determined that the candidate meets the minimum qualifications including any direction from Item 1.



Felipe Valladolid Chavez
Legislative Analyst

SMT:fvc

Attachments: Attachment 1 Motion (Price-Koretz-Wesson)
Attachment 2 California State Labor Code Section 430 – 432.9
Attachment 3 Personnel Letter Relative to AB 218
Attachment 4 Ban the Box Policies in Other Cities

14-0746

JUN 6 2014

MOTION ECONOMIC DEVELOPMENT

ATTACHMENT 1

In 2013, Governor Jerry Brown signed into law Assembly Bill (AB) 218 – Fairness in Government Hiring, also known as “Ban the Box” – which required that commencing July 1, 2014, the State and local governments would refrain from requiring job applicants to disclose criminal convictions until the hiring agency has verified that the applicant has met the minimum requirements for the position.

Cities like San Francisco, Philadelphia and Baltimore have also enacted similar laws requiring public and/or private employers to eliminate the criminal conviction box on job applications. While sufficient data is not yet available to determine the efficacy of criminal conviction box, advocates indicate removing barriers to employment would result in economic development benefits and a reduction in recidivism. The Center for Employment Opportunities has found that recently released prisoners who are provided with employment-specific interventions within three months from their release from prison are less likely to return to prison.

A City of Los Angeles Fair Chance Initiative would benefit qualified job applicants with a criminal record and our economy. Many qualified job applicants are discouraged from applying for employment because the box on job applications requires the disclosure of criminal history which often leads many employers to unfairly reject job applicants. The National Institute of Justice (NIJ) has found that the impact of having a criminal record is greater among African Americans and Latinos who may already experience racial discrimination in the labor market. According to the NIJ, a criminal record reduces the likelihood of a job offer by 50 percent.

In April 2011, Governor Jerry Brown signed Assembly Bill (AB 109), also known as Realignment, which shifted responsibility for certain populations of offenders from the state to the counties. The California Department of Corrections and Rehabilitation (CDCR) estimated that approximately 9,000 offenders would be released to Los Angeles County in the first year.

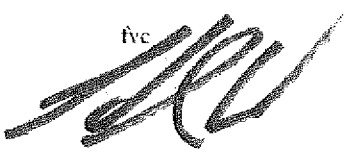
Given the potential impact of prisoners released to the Los Angeles region as a result of Realignment, compounded by the dire state of the local economy and rising unemployment rate, the City should explore the feasibility of implementing a local version of “Ban the Box” which could potentially lower recidivism, promote public safety and reduce unnecessary barriers to employment opportunities and other economic benefits.

I THEREFORE MOVE that the City Council instruct the Office of the Chief Legislative Analyst to: 1) work with the Economic and Workforce Development, Public Works Department, City Attorney, Personnel Department, any other appropriate City department and community advocates to determine the feasibility of establishing a City of Los Angeles Fair Chance Initiative, a.k.a. “Ban the Box” Policy to remove barriers for individuals with a criminal record; and 2) examine “Ban the Box” policies in other cities including procedural implementation, specific restrictions and exemptions.

PRESENTED BY Curren D. Price, Jr.
CURREN D. PRICE, JR
Councilmember, 9th District

SECONDED BY Paul Kueh
Paul Kueh

ORIGINAL

fv


JUN 6 2014

LABOR CODE

SECTION 430-435

430. As used in this article "applicant" means an applicant for employment.

432. If an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.

432.2. (a) No employer shall demand or require any applicant for employment or prospective employment or any employee to submit to or take a polygraph, lie detector or similar test or examination as a condition of employment or continued employment. The prohibition of this section does not apply to the federal government or any agency thereof or the state government or any agency or local subdivision thereof, including, but not limited to, counties, cities and counties, cities, districts, authorities, and agencies.

(b) No employer shall request any person to take such a test, or administer such a test, without first advising the person in writing at the time the test is to be administered of the rights guaranteed by this section.

432.5. No employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.

432.7. (a) No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1 of the Penal Code, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a, 1203.45, and 1210.1 of the Penal Code. As used in this section, a conviction shall include a plea, verdict, or finding

of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

(b) Nothing in this section shall prohibit the disclosure of the information authorized for release under Sections 13203 and 13300 of the Penal Code, to a government agency employing a peace officer. However, the employer shall not determine any condition of employment other than paid administrative leave based solely on an arrest report. The information contained in an arrest report may be used as the starting point for an independent, internal investigation of a peace officer in accordance with Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.

(c) In any case where a person violates this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars (\$200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars (\$500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(d) 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.

(e) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies as defined in Section 13101 of the Penal Code are not covered by this section.

(f) Nothing in this section shall prohibit an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, from asking an applicant for employment either of the following:

(1) With regard to an applicant for a position with regular access to patients, to disclose an arrest under any section specified in Section 290 of the Penal Code.

(2) With regard to an applicant for a position with access to drugs and medication, to disclose an arrest under any section specified in Section 11590 of the Health and Safety Code.

(g) (1) No peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(2) No other person authorized by law to receive criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.

(3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who knowing he or she is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency,

pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, shall receive or possess that information.

(h) "A person authorized by law to receive that information," for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal offender records maintained by a local law enforcement criminal justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal justice agency who is required by that employment to receive, analyze, or process criminal offender record information.

(i) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

(j) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or 13352.5 of the Vehicle Code, or any other program expressly authorized and described by statute as a diversion program.

(k) (1) Subdivision (a) shall not apply to any city, city and county, county, or district, or any officer or official thereof, in screening a prospective concessionaire, or the affiliates and associates of a prospective concessionaire for purposes of consenting to, or approving of, the prospective concessionaire's application for, or acquisition of, any beneficial interest in a concession, lease, or other property interest.

(2) For purposes of this subdivision the following terms have the following meanings:

(A) "Screening" means a written request for criminal history information made to a local law enforcement agency.

(B) "Prospective concessionaire" means any individual, general or limited partnership, corporation, trust, association, or other entity that is applying for, or seeking to obtain, a public agency's consent to, or approval of, the acquisition by that individual or entity of any beneficial ownership interest in any public agency's concession, lease, or other property right whether directly or indirectly held. However, "prospective concessionaire" does not include any of the following:

(i) A lender acquiring an interest solely as security for a bona fide loan made in the ordinary course of the lender's business and not made for the purpose of acquisition.

(ii) A lender upon foreclosure or assignment in lieu of foreclosure of the lender's security.

(C) "Affiliate" means any individual or entity that controls, or is controlled by, the prospective concessionaire, or who is under common control with the prospective concessionaire.

(D) "Associate" means any individual or entity that shares a common business purpose with the prospective concessionaire with respect to the beneficial ownership interest that is subject to the consent or approval of the city, county, city and county, or district.

(E) "Control" means the possession, direct or indirect, of the power to direct, or cause the direction of, the management or policies of the controlled individual or entity.

(l) (1) Nothing in subdivision (a) shall prohibit a public agency, or any officer or official thereof, from denying consent to, or approval of, a prospective concessionaire's application for, or

acquisition of, any beneficial interest in a concession, lease, or other property interest based on the criminal history information of the prospective concessionaire or the affiliates or associates of the prospective concessionaire that show any criminal conviction for offenses involving moral turpitude. Criminal history information for purposes of this subdivision includes any criminal history information obtained pursuant to Section 11105 or 13300 of the Penal Code.

(2) In considering criminal history information, a public agency shall consider the crime for which the prospective concessionaire or the affiliates or associates of the prospective concessionaire was convicted only if that crime relates to the specific business that is proposed to be conducted by the prospective concessionaire.

(3) Any prospective concessionaire whose application for consent or approval to acquire a beneficial interest in a concession, lease, or other property interest is denied based on criminal history information shall be provided a written statement of the reason for the denial.

(4) (A) If the prospective concessionaire submits a written request to the public agency within 10 days of the date of the notice of denial, the public agency shall review its decision with regard to any corrected record or other evidence presented by the prospective concessionaire as to the accuracy or incompleteness of the criminal history information utilized by the public agency in making its original decision.

(B) The prospective concessionaire shall submit the copy or the corrected record of any other evidence to the public agency within 90 days of a request for review. The public agency shall render its decision within 20 days of the submission of evidence by the prospective concessionaire.

(m) Subdivision (a) does not prohibit an employer from asking an applicant about a criminal conviction of, seeking from any source information regarding a criminal conviction of, utilizing as a factor in determining any condition of employment of, or entry into a pretrial diversion or similar program by, the applicant if, pursuant to Section 1829 of Title 12 of the United States Code or any other state or federal law, any of the following apply:

(1) The employer is required by law to obtain information regarding a conviction of an applicant.

(2) The applicant would be required to possess or use a firearm in the course of his or her employment.

(3) 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.

(4) The employer is prohibited by law from hiring an applicant who has been convicted of a crime.

432.8. The limitations on employers and the penalties provided for in Section 432.7 shall apply to a conviction for violation of subdivision (b) or (c) of Section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of Section 11360 of the Health and Safety Code, or Section 11364, 11365, or 11550 of the Health and Safety Code as they related to marijuana prior to January 1, 1976, or a statutory predecessor thereof, two years from the date of such a conviction.

432.9. (a) A state or local agency shall not ask an applicant for employment to disclose, orally or in writing, information concerning the conviction history of the applicant, including any inquiry about conviction history on any employment application, until the agency has determined the applicant meets the minimum employment qualifications, as stated in any notice issued for the position.

(b) This section shall not apply to a position for which a state or local agency is otherwise required by law to conduct a conviction history background check, to any position within a criminal justice agency, as that term is defined in Section 13101 of the Penal Code, or to any individual working on a temporary or permanent basis for a criminal justice agency on a contract basis or on loan from another governmental entity.

(c) This section shall not be construed to prevent a state or local agency from conducting a conviction history background check after complying with all of the provisions of subdivision (a).

(d) As used in this section, "state agency" means any state office, officer, department, division, bureau, board, commission, or agency.

(e) As used in this section, "local agency" means any county, city, city and county, including a charter city or county, or any special district.

(f) Section 433 does not apply to this section.

(g) This section shall become operative on July 1, 2014.

433. Any person violating this article is guilty of a misdemeanor.

434. The provisions of this article shall not apply to applications for employment filed with common carriers by railroad subject to the act of Congress known as the Railway Labor Act.

435. (a) No employer may cause an audio or video recording to be made of an employee in a restroom, locker room, or room designated by an employer for changing clothes, unless authorized by court order.

(b) No recording made in violation of this section may be used by an employer for any purpose. This section applies to a private or public employer, except the federal government.

(c) A violation of this section constitutes an infraction.

CITY OF LOS ANGELES
INTRA-DEPARTMENTAL CORRESPONDENCE

Date: April 24, 2014

To: All Personnel Directors

From: 
Margaret Whelan, General Manager
Personnel Department

Subject: **AB 218 – APPLICANT CONVICTION INFORMATION**

In October 2013, California State Legislature passed AB 218. As noted in the legislative summary, this bill is focused on reducing barriers to employment for individuals with conviction records. As a result, **effective July 1, 2014**, state and local agencies are prohibited from asking an applicant to disclose information relating to a criminal conviction until it has been determined that the applicant meets the minimum employment qualifications for the position. AB 218's prohibition does not apply to agencies required by law to conduct a background check, any position with a criminal justice agency, or any employee working for a criminal justice agency on a contract or loan basis (please see attached summary).

As a public employer, the City must now first determine if an applicant meets the minimum employment qualifications – as stated in the notice issued for the position – before requesting any criminal conviction information. The Personnel Department is taking steps to ensure that the City civil service process complies with this new legislation. After an applicant is determined to meet the minimum requirements listed on the job bulletin, they will be asked to submit the additional background information. This information will only be reviewed at the time of establishing the eligible list.

Departments that hire outside the Civil Service process will need to ensure that their process meets the criteria set forth by AB 218. Staff is currently working with General Services Department staff to create a revised City application form and will make it available when it is completed.

Personnel Department staff will work with operating departments to assist through this transition as necessary. Please contact Carmen Lopez at (213) 473-9339 or by email at Carmen.Lopez@lacity.org if you have any questions. Thank you for your attention to this matter.

Attachment

Ban the Box Policies

	Federal Law	STATE LAWS						CALIFORNIA CITIES				OTHER CITIES			
Jurisdiction	United States	California		Illinois		Massachusetts	New York	Compton	Richmond	San Francisco		Baltimore	Chicago	New York	Washington D.C.
Legislation	Executive Order	Labor Code Section 432.7	Labor Code Section 432.9 (AB 218)	Executive Order	Job Opportunities for Qualified Applicants Act	Criminal Offender Record Information Amendment	State Law	Resolution and Hiring Policy	Council Ordinance	City and County Ordinance	Fair Chance Ordinance	-Hiring Policy -City Ordinance	City Ordinance	Fair Chance Act	City Council
Date	November 2, 2015	Not specified.	July 1, 2014	October 1, 2013	January 1, 2015	April 6, 2010	September 15, 2015	July 1, 2011	September 2013	2005	April 13, 2014	August 13, 2014	January 1, 2015	August 2010 (City only) June 10, 2015	July 14, 2014
Provisions	U.S. President directed the Office of Personnel Management to modify its rules to delay inquiries into criminal history until later in the hiring process.	Prohibits public and private employers from asking job applicants about an arrest or detention that did not result in a conviction.	Prohibits state and local agencies from asking applicants to disclose information regarding criminal convictions.	Removed all questions about the job applicant's criminal history from job applications.	Prohibits public and private employers from inquiring about a job applicant's criminal record until the employer has selected the applicant for an interview or, if no interview, until after a conditional offer of employment has been made.	-Employers may not ask: 1) Job applicant to provide any information related to criminal history on a written application, prior to the interview. 2) About misdemeanor or felony convictions on a written application, prior to an interview. 3) An applicant to obtain a criminal record. 4) About arrest, detention or disposition that did not result in a conviction. 5) About a prior first conviction for: drunkenness, simple assault, speeding, minor traffic violations, or disturbances of the peace.	Applicants for competitive positions with New York State agencies will not be required to discuss or disclose information about prior convictions.	City may not require applicants to disclose information about arrests or detentions that did not result in a conviction or that resulted in a referral to and participation in a diversion program.	All contractors, lessees, recipients of City financial aid, and their respective contractors with 10 or more full time employees who desire contracts with the City of Richmond must remove any question regarding prior criminal convictions from their printed and/or on-line employment application forms and do not make any inquiry into an applicant's conviction history.	In 2005, City and County removed the question regarding criminal history on initial job applications for public employment. -Employers are required to provide applicant with ordinance notice before inquiring about criminal conviction. -Employer is required to conduct a job applicant criminal history assessment. -Employers are required to provide applicants with an opportunity to explain or correct an unresolved arrest. -Employer is required to delay any adverse action and reconsider the action if evidence of rehabilitation is presented. -Requires employer to inform applicant of adverse action if one is taken based on applicant's unresolved arrest or conviction history.	-Prohibits employers from issuing job ads discouraging persons with arrests or convictions. -Prohibits questions about criminal history, participation in a diversion program, dismissed convictions, juvenile convictions, seven year old convictions, and infractions. -Applies to all employers not based in San Francisco including those that have employees that work eight or more hours in San Francisco.	Employers may not require job applicants to disclose criminal history prior to making a conditional offer of employment.	Prohibits employers from inquiring about a job applicant's criminal record until the employer has selected the applicant for an interview or, if no interview, until after a conditional offer of employment has been made.	-Bans job ads that say things like "no felonies" or "must pass background check." -Bans any questions about criminal history on job applications. -Bans any questions about criminal history during job interviews. -An employer can check criminal record history only after a conditional job offer.	Employers may never ask about arrest history. Employers may ask about conviction history after a conditional offer of employment has been made.
Applicability	-Federal hiring. -Federal contractors.	-State agencies	-State agencies -Counties -Cities	-State agencies -Boards and Commissions	Private employers	-Public employment. -Private employment.	State employment.	-City employment. -City contractors.	City Contractors	-County employment. -City employment.	-Private employers. -City Contractors. -Affordable housing providers.	-Public employment. -Private employers.	Private employment.	-City employment, -Licensing and permitting -Private employers.	-Public employment. -Private employers.
Employee Threshold	None.	None.	None.	None.	15 employees or more.	Private employers with six or more employees.	None.	None.	10 or more employees.	None.	20 employees or more for private employers. -All City contractors.	Private employers with 10 or more employees.	All private employers.	Private employers with four or more employees.	Private employers with 10 employees or more.
Point at which criminal history questions may be asked.	Office of Personnel Management is currently making modifications to its rules to delay inquiries into criminal history until later in the hiring process.	When it is determined that the applicant meets the minimum job requirements.	When it is determined that the applicant meets the minimum requirements.	Inquiries into a job applicant's criminal history may be done after the interview process.	Until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview by the employer, or if there is no interview, until a conditional offer of employment has been made.	After the interview stage of the hiring process.	Agencies may inquire about prior convictions after the agency has interviewed the candidate and is interested in hiring the candidate.	Criminal background checks are conducted for all employment positions offered by the City of Compton after a conditional offer of employment is made.	-For positions where a background check is required by state of federal law, it will be conducted until it has been determined that the applicant has met minimum qualifications.	Until after an employer has conducted a live interview or made a conditional offer of employment to the applicant.	Questions about conviction history or unresolved arrests may not be made until after an employer has conducted a live interview or made a conditional offer of employment to the applicant.	After a conditional offer of employment has been made.	Employers may inquire about criminal record until the applicant has been selected for an interview by the employer or until a conditional offer of employment has been made.	Until employer has made a conditional offer of employment. If after the conditional offer of employment is made, an arrest is disclosed, employers must provide applicants with an analysis and background of any report. Job applicant may only be denied if the conviction history is directly related to the job or poses an unreasonable risk based on certain factors, such as the time passed since the offense and its severity.	Until employer has made a conditional offer of employment.

Ban the Box Policies

	Federal Law	STATE LAWS					CALIFORNIA CITIES			OTHER CITIES					
Jurisdiction	United States	California		Illinois	Massachusetts	New York	Compton	Richmond	San Francisco		Baltimore	Chicago	New York	Washington D.C.	
Exemptions	Not specified at this time.	<ul style="list-style-type: none"> -Positions related to law enforcement. -Positions in health facilities. -Positions with access to drugs and medication. -Positions for which the law requires a criminal background check. 	<ul style="list-style-type: none"> -Positions required by law to conduct a conviction history background check. -Positions within criminal justice agencies. -Any individual working on a temporary or permanent basis for a criminal justice agency on a contract basis or on loan from another governmental entity. 	<ul style="list-style-type: none"> -Positions for which federal or state law prohibits hiring an individual with certain criminal convictions. -Positions for which the applicant has been convicted of an infraction that is reasonably related to the position. 	<ul style="list-style-type: none"> Positions for which federal or state law prohibits employers from hiring applicants with certain criminal convictions. -Employer employs individuals licensed under the Emergency Medical Services (EMS) Systems Act. 	<ul style="list-style-type: none"> An employer may ask about criminal history if: -When federal and state government require criminal history. 	Not Specified.	<ul style="list-style-type: none"> -Applicant who is arrested and is currently on bail or pending trial. -Positions with access to patients, drugs, or medication at a healthcare facility. -Positions in law enforcement (peace officer). 	<ul style="list-style-type: none"> -Positions that are mandated by federal or state law to undergo a criminal background check. 	<ul style="list-style-type: none"> -Law enforcement positions. -Where required by state or federal law. 	<ul style="list-style-type: none"> -Federal and state laws requiring criminal background checks supersede the ordinance. 	<ul style="list-style-type: none"> -Employers that provide programs, services, or direct care to minors or vulnerable adults; -Positions required by law to consider criminal history. 	<ul style="list-style-type: none"> Positions for which federal or state law prohibits employers from hiring applicants with certain criminal convictions. -Conviction of one or more specified crimes would disqualify an applicant from obtaining a required standard fidelity bond. -Employer employs individuals licensed under the Emergency Medical Services (EMS) Systems Act. 	<ul style="list-style-type: none"> Employment: -Law enforcement agencies. Licensing: -Regulation of explosives and firearms. 	<ul style="list-style-type: none"> -Employers that provide programs, services, or direct care to minors or vulnerable adults; -Positions required by law to consider criminal history. -Positions designated by the employer as part of a program designed to encourage employment of those with criminal histories. -District of Columbia courts.
Compliance	Not specified at this time.	<ul style="list-style-type: none"> -A person violating this article is guilty of a misdemeanor. -Violations may be punishable by fines between \$200 and \$500 plus costs and reasonable attorney's fees. -Monitoring agency not specified. 	<ul style="list-style-type: none"> -Monitoring agency not specified. 	<ul style="list-style-type: none"> -Monitoring agency not specified. 	<ul style="list-style-type: none"> Enforcement by Illinois Department of Labor This bill authorizes the imposition of warnings and civil penalties against violators. - First Violation: Written warning -Second Violation: \$500 -Third or Subsequent Violation: \$1,500 	<ul style="list-style-type: none"> Enforced by the Massachusetts Commission Against Discrimination. 	<ul style="list-style-type: none"> -Monitoring agency not specified. 	<ul style="list-style-type: none"> -Monitoring agency not specified. 	<ul style="list-style-type: none"> Violation of this ordinance shall be subject to contract or lease termination. 	<ul style="list-style-type: none"> -Monitoring agency not specified. 	<ul style="list-style-type: none"> Office of Labor Standards Enforcement. Violations: -First Violation: warning. -Second Violation: \$50 Administrative Penalty. -Subsequent Violations: \$100 Administrative Penalty 	<ul style="list-style-type: none"> -Complaints may be submitted to the Community Relations Commission. -Decisions by the Commission may result in: (1) backpay for lost wages, (2) reinstatement (when applicable); and (3) compensatory damages, which may include: compensation for humiliation, embarrassment, and emotional distress; and expenses incurred in seeking other employment. - Violators are guilty of a misdemeanor and on conviction, subject to a fine of not more than \$500 or imprisonment for not more than 90 days or both. 	<ul style="list-style-type: none"> Enforcement by Chicago Commission on Human Rights -Violations of the Ordinance may result in a fine of between \$100 and \$1000 for each offense (each day constitutes a separate offense) -Any licensee that violates the ordinance may be subject to having its license suspended or revoked. 	<ul style="list-style-type: none"> -Private employers could be sued for damages by affected job applicants. -Complaints may be filed with the Commission on Human Relations. 	<ul style="list-style-type: none"> -Affected job applicants may only file an administrative complaint with the D.C. Commission on Human Rights. -If the Commission finds a violation, the Commission may impose monetary penalties, ranging from \$1,000 to \$5,000 depending on the employer's number of employees.