



September 11, 2024

What is the Fair Chance Ordinance?

By: [Amber Healy](#), [Craig Nickerson](#), and [Spencer Adler](#)

On September 3rd, 2024, Los Angeles County's Fair Chance Ordinance ("FCO") went into effect, establishing new criminal background check requirements for employers in unincorporated areas of Los Angeles County. The FCO expands the limitations placed on employers by California's Fair Chance Act ("FCA").

Does this Impact You?

The FCO applies to employers: **(1)** located or doing business in unincorporated areas of Los Angeles County, **and (2)** employ five or more individuals (including independent contractors).

An interactive map of the covered area is available [here](#).

What Changes?

The FCO imposes stricter requirements on employers than the FCA relating to the use of criminal background in **(1)** the hiring of applicants, **(2)** the promotion of employees, and **(3)** taking adverse action against current employees.

In this alert we address some of the changes covered employers should make to existing policies and practices.

Job Postings and Announcements: Review all job solicitations, announcements and postings.

What to Add:

- A statement that applicants with arrest or conviction records will be considered;
- A list of material job duties which the employer reasonably believes may adversely be impacted by criminal history;
- (When applicable) A list of laws or regulations that restrict or prohibit employment due to criminal history.

What to Remove:

- Phrases such as "No Felons," "No Convictions," or "Must Pass Background Check;"
- Any other language that discourages applicants with a criminal history.

Interview Process: At **NO** point during the interview should an employer require an applicant to disclose their criminal history. If an applicant's criminal history comes up during the interview, employers cannot immediately end the interview or reject the applicant.

Background Checks and Offers: A background check can only be initiated after a conditional offer is made along with written notice of the background check). The notice should be added to the offer letter



or included in the offer packet. The notice must include:

- A statement that the offer is contingent upon review of the criminal history;
- A statement of “good cause” to review criminal history for the job with supporting justification. Supporting justification includes:
 - a) A significant risk to business operations or reputation without criminal history review;
 - b) Articulate concerns regarding the safety of, or risk of harm to staff, clients, or the public.
- A complete list of information that will be reviewed in addition to criminal history.

Consideration of Criminal History: Prior to discussing criminal history, employers must provide a copy of the completed background check to the applicant/employee. Notably, only convictions in the last seven years may be considered.

Denial and Adverse Action: If an employer intends to deny employment or take adverse action against an employee because of their criminal history, the following steps are required:

1. Initial Individualized Assessment

Employers must document why the applicant or employee’s criminal history has a direct, adverse, negative impact on their ability to perform duties, that justifies denying them the position/taking adverse action. This must include consideration of:

- The nature and gravity of the offense;
- The nature of the position sought;
- Evidence of rehabilitation or mitigating circumstances;

Additional explanation is needed if they have a current, valid certificate, license, or similar credential related to the position.

2. Provide Written Notice

Employers must provide written notice of the decision via regular mail and email (if available). The notice must explain that:

- The employer intends to rescind the offer or take adverse action because of their criminal history;
- Explanation of their right to respond with information regarding (1) the waiting periods and timelines to respond (bold font, underlined, or capital letters); and (2) that they may provide evidence challenging the accuracy of the findings and/or evidence of rehabilitation or mitigating circumstances;
- A copy of the Initial Individualized Assessment;
- A list of the disqualifying conviction(s);
- A copy of the background check and documentation related to the decision.

3. Time to Respond

Employers must provide the applicant/employee five business days to respond before taking any further action (including hiring another applicant). If requested, an additional ten days must be provided to obtain evidence of rehabilitation/mitigating circumstances or dispute the accuracy of the findings.



4. **If No Response**

If the applicant/employee does not respond or the additional time passes without any new information, the employer may take action.

5. **If They Respond**

If the applicant/employee does respond, employer must complete a Second Individualized Assessment. This assessment mimics the requirements of the Initial Individualized Assessment, taking into account the previous factors and any new information.

6. **Notice of Final Decision**

If the employer wishes to rescind the offer/take adverse action, they must provide written notice via regular mail and email (if available). The notice must include:

- A statement that a final decision has been made to rescind the offer or take adverse action because of the criminal history;
- A copy of the Second Individualized Assessment;
- A list of the disqualifying conviction(s);
- The procedure the employer has in place to challenge the decision;
- The right to file a complaint with the Los Angeles County Department of Consumer & Business Affairs;
- If more than 30 days pass after the response, a justification for the delay.

**** Denial Due to Delay ****

Employers cannot rescind an offer solely because of a delay in the background check process, unless: (1) the business would suffer an undue burden if the position was left open pending the results, or (2) ten business days have passed since requesting the background check.

Posting Requirements: FCO Notice must be posted on an employer's website, at the workplace and any locations under an employer's control that is frequented by employees/applicants.

Employers covered by collective bargaining agreements, must send notice to each labor union.

Notice must be in English and any other language spoken ten percent or more of the workforce.

Document Retention Policies: You must keep all documents utilized in relation to the FCO for a minimum of four years.



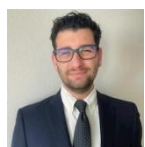
Amber Healy

Shareholder
(213) 891-5087
ahaley@buchalter.com



Craig D. Nickerson

Shareholder
(858) 351-6801
cnickerson@buchalter.com



Spencer Adler

Law Clerk
(619) 219-5428
sadler@buchalter.com