

LOCAL LAW NO. "N" FOR 2016

A LOCAL LAW OF THE COUNTY OF ALBANY, NEW YORK PROHIBITING ALBANY COUNTY GOVERNMENT FROM DISCRIMINATING AGAINST POTENTIAL EMPLOYEES BASED ON THEIR CRIMINAL ARREST RECORD OR CONVICTION

Introduced: 8/8/16

By Mr. Fein, Ms. McKnight, Mr. Simpson, Mss. Chapman, Willingham, Messrs. Clay, Commisso, Ward, Feeney, Miller, Reinhardt, Touchette, Bullock, Higgins, Ms. Lekakis and Messrs. Clenahan, Beston, Signoracci, Smith, Mss. McLean Lane, Cunningham, Messrs. A. Joyce and R. Joyce:

BE IT ENACTED, by the Legislature of the County of Albany as follows:

Section 1. Title

This local law shall be known as the "Albany County Fair Chance Act"

Section 2. Legislative Intent

The Legislature finds that those with a criminal history regularly face discrimination in many areas of life, including employment.

The Legislature further finds that studies indicate that stable employment is one of the best predictors of post-conviction success.

The Legislature further finds that the ability of people with a criminal history to successfully reintegrate into their communities and find employment improves public safety and benefits local taxpayers, as less crime leads to safer communities, strengthens families, and saves taxpayers money on costs associated with law enforcement and incarceration.

The Legislature determines that those who have been incarcerated have paid their debt to society and should be considered fully free men and women. They should not be further punished once they are released from prison and should be evaluated based on their qualifications to perform a job rather than their criminal history.

The Legislature determines that people with a criminal history represent a workforce with skills to contribute and a desire to add value to their communities.

The Legislature determines that the main goal of a criminal justice system should be rehabilitation and that once people enter back into society, they should be treated fairly and without discrimination based on a prior conviction.

The Legislature finds that job discrimination based on criminal history can affect anyone regardless of race, religion, national origin, gender, or sexual orientation. However, African Americans are disproportionately hurt by discrimination based on criminal history due to a long history of policies that have led to African Americans being incarcerated at rates more than five times that of Whites and more than two and a half times that of Hispanics.

The Legislature determines that due to a criminal justice system, in which minorities are incarcerated at much higher rates than Whites, African Americans and Hispanics bear the brunt of discrimination based on criminal history in employment.

The Legislature finds that nine municipalities and two counties in the state of New York have implemented policies to protect job applicants against potential discrimination, including the three largest cities in the state: New York City, Buffalo, and Rochester.

The Legislature further finds that over twenty states and over one hundred municipalities and counties throughout the United States across all political lines have implemented policies to protect job applicants from potential discrimination.

The Legislature further finds that New York Correction Law does not prohibit employers from inquiring about criminal history on job applications. In the application processes where the vast majority of applications are tossed aside during an initial review for a variety of reasons, it makes it extremely difficult for an applicant to prove that he or she was not hired due to his or her criminal history.

Therefore, the purpose of this Local Law is to ensure that everyone receives a fair chance in seeking employment with Albany County, regardless of one's arrest record or criminal history.

Section 3. Definitions

As used in this Local Law, the following terms shall have the meanings indicated:

A. "Applicant" means any person considered or who requests to be considered for employment by Albany County

B. "Adverse action" means to refuse to hire or promote, to discharge a person, or revoke an applicant's conditional offer of employment.

C. "Arrest" means a record or action by any jurisdiction that does not result in a conviction, or any encounter with a law enforcement agency that does not result in a conviction. This includes information indicating that a person has been questioned, apprehended, taken into custody or detained, or held for an investigation by a law enforcement, police, or prosecutorial agency.

D. "Conviction" means any sentence arising from a plea or verdict of guilty, including a sentence of incarceration, suspended sentence, a sentence of probation, or sentence of unconditional discharge.

E. "County" means the County of Albany, its departments, administrative units, and related agencies.

F. "Criminal history" means an individual's prior conviction and/or sentencing.

G. "Employer" means the County of Albany.

H. "Employment" means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay.

Section 4. Prohibitions Against Unfair Discrimination

A. No employer shall inquire about an applicant's criminal history during the application process, including any question or "box" on a job application, question during an interview, or any other inquiry. No employer shall inquire about an applicant's criminal history until after a conditional offer of employment is made. The employer shall not inquire about an applicant's arrest record at any point in the application process, interview process, or during any inquiry relating to criminal history.

B. No employer shall take adverse action against an individual due to an individual's criminal history until after a conditional offer of employment is made.

C. No employer shall take adverse action against an individual due to the individual's criminal history unless the employer follows the regulations and guidelines explained in this Local Law, or unless allowed by law.

Section 5. Regulations Relating to Background Checks

A. All job announcements and position descriptions shall contain the following information if the position requires a background check, unless otherwise noted by law: *“This position is subject to a background check for any convictions deemed related to its duties and responsibilities. Convictions will be considered but will not automatically disqualify the candidate. No background check will occur until after a conditional offer of employment has been made. Any revocation of an offer of employment due to criminal history will include a clear explanation and instructions for appeal.”*

B. No employer shall use the following criminal records in relation to a background check: records of arrest not followed by a valid conviction, sealed, dismissed, or expunged convictions, violations, and infractions.

Section 6. Guidelines for Consideration of Criminal History, Revocation of Offer of Employment, and Appeal Process

A. After a conditional offer of employment is made, no employer shall inquire about an applicant’s criminal history or conduct a background check unless the employer has made a good faith determination that the relevant position warrants an inquiry into the applicant’s criminal history or a background check is warranted or is required by law.

B. Prior to conducting a background check or inquiring about an applicant’s criminal history, the employer shall send the applicant a conditional offer of employment and notice of rights under this Local Law.

C. After a conditional offer of employment is made, if based on a good faith determination the employer has determined that a criminal history inquiry or background check is warranted or is required by law, the employer may only take adverse action against the applicant pursuant to New York Correction Law Article 23-A.

D. If an employer determines, based on New York Correction Law Article 23-A, that an applicant’s conviction history contains information that warrants adverse action, the employer shall supply the applicant with an adverse action notice containing the following:

- a. The conviction item(s) that are the basis for the adverse action;
- b. A copy of the conviction history report, if any;
- c. An individualized assessment explaining why the employer believes that adverse action is appropriate based on the applicant’s criminal history.
- d. Instructions on how to appeal the adverse action notice.

E. If an employer sends the applicant an adverse action notice, the applicant may appeal the adverse action notice by and submitting a letter of intent to appeal the decision to the Albany County Department of Human Resources within ten days of the applicant's receipt of the adverse action notice. If the applicant chooses to mail a letter, it must be postmarked within ten days of the applicant's receipt of the adverse action notice. If the applicant submits a letter of intent to appeal the adverse action notice, the applicant shall have twenty additional days to submit a letter or email to the Albany County Department of Human Resources containing information rebutting the basis for the adverse action, including challenging the accuracy of the information, submitting mitigation or rehabilitation evidence, and submitting reference letters.

F. Nothing shall prevent an employer from taking adverse action against any applicant or denying employment for reasons other than such applicant's criminal conviction record.

Section 7. Data Collection

The employer shall maintain a record of the number of positions requiring background checks and for those positions, shall maintain a record of the number of applicants and the number of applicants who were provided a conditional offer of employment. In addition, the employer shall maintain a record of the number of applicants who were provided an adverse action notice; the number of applicants who appealed the adverse action notice to the Albany County Department of Human Resources; and the number of applicants who won adverse action appeals. The employer shall also maintain a record of the race/ethnicity and gender of all applicants for all of the required data collection categories listed above.

Section 8. Exceptions

The prohibitions of this Local Law shall not apply if inquiries about an applicant's criminal history, arrest record or other adverse action are specifically prohibited, authorized or required by any other applicable law.

Section 9. Enforcement and Appeal Process

The Albany County Department of Human Resources is authorized to enforce this Local Law, to promulgate additional rules and regulations, and take any and all other reasonable actions necessary to implement and enforce this Local Law. Any rules and regulations set forth in this Local Law and/or promulgated by the Albany County Department of Human Resources shall be made available on the County of Albany website in a manner approved by the Department of Human Resources.

The Albany County Department of Human Resources shall be responsible for conducting proper outreach about this Local Law. The Grievance Committee of the Albany County Legislature shall be responsible for hearing all appeals to an adverse action notice. Hearings on appeals to adverse action shall be held before all members of the Grievance Committee of the Albany County Legislature and decisions shall be rendered by a majority of the members of Grievance Committee. Each member of the commission shall receive one vote. The Grievance Committee of the Albany County Legislature shall consider the employer's adverse action notice and the all information rebutting the basis for adverse action that the applicant has sent to the Albany County Department of Human Resources within twenty days of sending the initial letter or email of intent to appeal the adverse action notice. The employer and the applicant shall have the opportunity to present their cases during the hearing. The Grievance Committee of the Albany County Legislature shall conduct a hearing within thirty-five days of the Albany County Department of Human Resources receiving the applicant's intent to appeal the adverse action notice. The Grievance Committee of the Albany County Legislature shall render a decision not more than thirty (30) days after the completion of the hearing.

Section 10. Audit

The Albany County Department of Human Resources shall collect all data described in Section 7 of this Local Law once every year and release a report to the Albany County Legislature and to the public, to be posted on the County of Albany website that shall clearly show all data collected. The report shall include an analysis of all data collected in Section 7 and shall include a racial impact statement.

Section 11. Reverse Preemption.

This local law shall be null and void on the day that federal or statewide legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Albany. The County Legislature may determine via mere resolution whether or not identical or substantially similar federal or statewide legislation, or pertinent preempting state or federal regulations have been enacted for the purposes of triggering the provisions of this section.

Section 12. Severability

If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be inconsistent with any federal or state statute, law, regulation or rule then the federal or state statute, law, regulation, or rule

shall prevail. If any clause, sentence, paragraph, section, subdivision, or other part of this local law or its application shall be adjudged by a court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder of the local law which shall remain in full force and effect except as limited by such order or judgment.

Section 13. Effective Date and Applicability

This local law shall be effective immediately upon filing in the Office of the Secretary of State.

Referred to Law and Personnel Committees. 8/8/16

Favorable Recommendation Personnel Committee 11/16/16

Favorable Recommendation Law Committee 12/19/16

Tabled by Chair 1/9/17