

All of Us or None-Los Angeles Fair Employment & Housing Proposal

I. The Employer/Landlord Must Have Legitimate Reasons for Criminal History Background Checks

The employer/landlord must have real, justifiable reasons to rely on criminal history background checks, not based on irrational fear of people who have criminal records.

Before conducting a background check, the employer/landlord must self-certify and be subject to verification of such certification that:

- (1) the job position/lease requires the employee or renter to have *unsupervised* access to
 - a. vulnerable population (the elderly, the disabled, and/or minors)
 - b. sensitive information (such as private and personally-identifying information, e.g. social security number, date of birth, etc.); and/or
 - c. valuable property;
- (2) denial of employment or housing is the only reasonable way to safeguard the identified concerns about vulnerable population, sensitive information, and/or valuable property; and
- (3) it is not possible for the employer or landlord to obtain reliable evidence of the employee or renter's current character¹ without the use of criminal history background checks.

EXAMPLE A: *Company A is hiring for the position of an entry-level warehouse worker. The employee will have access to valuable property; however, the access is always supervised by a shift manager. His entry into and exit from the warehouse is monitored by security cameras. Company A cannot self-certify that the position requires the employee to have unsupervised access to valuable property.*

EXAMPLE B: *Company B is hiring for the position of an entry-level warehouse worker. The employee will have unsupervised access to valuable property. However, the company can require, without undue burden, that all employees check in and check out with a manager for their shifts. And it can also install security cameras through the warehouse at a reasonable cost. Company B cannot self-certify that denial of employment is the only way to safeguard valuable property in its warehouse.*

EXAMPLE C: *Company C is promoting a long-time employee to the position a warehouse manager. The warehouse manager will have unsupervised access to sensitive information (every warehouse worker's full name, birth date, home address, and phone number). Internal reviews of the long-time employee over the past 5 years indicate that he has demonstrated honesty and good character. Company C cannot self-certify that it is not able to obtain reliable evidence of the employee's current character without the use of criminal history background checks.*

¹ Reliable evidence of the employee or tenant's current character includes the use of a probationary period (up to 6 months) during which the employee or tenant is closely supervised.

EXAMPLE D: *Company D is hiring an administrative assistant to a warehouse manager. The administrative assistant will have unsupervised access to sensitive information (every employee's full name, birth date, home address, and phone number). Anyone can apply, even without any prior experience. Company D can self-certify that it has legitimate reasons to perform a criminal history background check—only if the applicant does not have reliable employment history.*

As part of the certification, the employer must also identify:

- (1) which specific offense types, if revealed, are potentially disqualifying; and
- (2) how long criminal history background checks will go back for each offense type.

EXAMPLE E: *Company D (see Example D above) is concerned about the administrative assistant abusing his unsupervised access to sensitive information of warehouse workers to commit identity theft. The company can identify that offenses involving fraudulent use of someone else's identity is a potentially disqualifying offense. The company can not identify generic "theft of property" as potentially disqualifying. Given that non-violent offenses have the redemption period of 5 years, the company identifies 5 years as a "washout period."*

II. The Employer/Landlord Must Use Criminal History Background Checks Only For Their Intended Purpose

In order to ensure that criminal history background checks are used only for their intended purpose of protecting legitimate interests, the entire process must be transparent.

- (1) The employer/landlord must provide on any job announcement a detailed description of the hiring process concerning criminal history background checks, including:
 - a. list of potentially-disqualifying offenses;
 - b. list of types of evidence that can counter the existence of potentially disqualifying offenses on a criminal history background check report, such as a certificate of rehabilitation; and
 - c. criteria used to evaluate potentially-disqualifying offenses revealed on a criminal history background check report, including use of counter-evidence offered by the applicant.
- (2) The employer/landlord may not ask the applicant to disclose any criminal history information through the process until after a copy of the criminal history background check report is provided to the applicant;
- (3) The employer/landlord may not conduct a criminal history background check on an applicant until after a conditional job offer or lease is made; and
- (4) The employer/landlord may not consider as part of its decision any information concerning offenses that were not previously identified as potentially-identifying or beyond the washout period.

III. The Employer/Landlord Must Provide a Meaningful Opportunity for People with Criminal History Records to Show Their Current Character

More often than not, revelation of negative information on a criminal history background check ends the process for the applicant. Such revelation should *start*, not end, a meaningful discussion between the employer/landlord and the applicant.

- (1) The employer/landlord should keep the position/lease open and start the review process;
- (2) The employer/landlord should provide to the applicant:
 - a. a summary of the applicant's rights and remedies;
 - b. the employer or landlord's self-certification regarding the use of criminal history background checks;
 - c. a copy of the applicant's criminal history background check report, identifying in particular which offenses are potentially disqualifying; and
 - d. a list of types of counter-evidence that, if provided, negate the existence of potentially-disqualifying offenses on the background check report.

IV. There Must be Effective Measures to Ensure Compliance

Effective compliance requires meaningful consequences to any failure to comply.

- (1) Employers/landlords must keep all relevant records for the period of statutory limitation;
- (2) Private employers/landlords are liable for,
 - a. either actual damages or minimum statutory fines, plus reasonable fees and costs incurred to recover the actual damage or the fine, in case of a negligent violation; or
 - b. minimum statutory fines, actual damages, punitive damages, and reasonable fees and costs incurred to recover, in case of a willful or reckless violation.
- (3) Public employers/landlords must create or identify an independent body to review employment decisions and appoint a meaningful number of qualified individuals with criminal history records to participate in the review with a right to a hearing and to representation.

V. The Policy Must Apply to All Relevant Actors

- (1) All agencies within the public entity, such as the Department of Water and Power and law enforcement (such as the Los Angeles Police Department and the City Attorney's Office);
- (2) All private employers doing business within the rule-making body's jurisdiction;
- (3) All landlords doing business within the rule-making body's jurisdiction; and
- (4) All employers/landlords doing business *with* the rule-making body.

VI. Limited Exemptions

- (1) When an existing law or regulation not under the power of the rule-making body to change requires a specific deviation from the Fair Employment & Housing Policy, such a specific

deviation is allowed only to the extent that the Fair Employment Policy and the existing law or regulation cannot both be complied with; and

- (2) When an employer/landlord certifies that it specifically intends to hire an individual with criminal history records for a particular position or offer a lease, the employer/landlord is exempt from provisions of the Fair Employment Policy to the extent that such provisions conflict with the employer or landlord's implementation of its intent to hire or offer a lease to an individual with criminal history records.