

## 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 and Bullock:

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 Employee 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 have implemented policies to protect job applicants from potential discrimination.

The Legislature further finds that there is broad support for fair chance hiring practices across political lines. Democratic President Obama signed an executive order in 2015 ordering all federal agencies to “ban the box” from job applications. Republican Governor John Kasich of Ohio signed a bill in 2015 that banned the box for all public employees in Ohio. Koch Industries, a company owned by the Koch Brothers, also banned the box for their employees in 2015. Koch Industries’ general counsel Mark Holden stated that the company believes they “shouldn’t be rejecting people at the very start of the hiring process who may otherwise be capable and qualified, and want an opportunity to work hard.”

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 arrest or arrests, or prior conviction 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.

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 directly related to its duties and responsibilities. Only job-related convictions will be considered and will not automatically disqualify the candidate. No background check will occur until after a conditional offer of employment has been made. Any revocation 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 is of such sensitivity that 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 that an applicant's conviction history contains information that may be the basis for an adverse action, the employer shall supply the applicant with a pre-adverse action notice containing the following:

- a. The conviction item(s) that are the basis for the potential adverse action;
- b. A copy of the conviction history report, if any;

- c. An individualized assessment explaining why the employer believes that adverse action may be appropriate based on the applicant's criminal history.
- d. Instructions on how to respond to a pre-adverse action notice.

E. If an employer sends the applicant a pre-adverse action notice, the applicant shall have twenty business days, after receipt of the notice, to respond with 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. After receiving the applicant's adverse action response, the employer must review the response for a minimum of ten business days unless the employer determines that adverse action is not warranted and hires the applicant. If the employer takes adverse action against the applicant, the employer shall supply the applicant with an adverse action final notice containing the following:

- a. A copy of the pre-adverse action notice and the applicant's response to the notice;
- b. An explanation of why the applicant's response to the pre-adverse action notice was not sufficient; and
- c. An adverse action appeal form.

G. If the employer takes adverse action against the applicant, the applicant may appeal the adverse action by filling out the adverse action appeal form and submitting it to the Albany County Department of Human Resources Division of Affirmative Action within three months of the applicant's receipt of the adverse action final notice. The applicant shall also submit the employer's pre-adverse action notice, the applicant's response to the pre-adverse action, and the employer's adverse action final notice.

H. Nothing shall prevent an employer from taking adverse action against any applicant or denying employment for reasons other than such applicant's arrest or 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 a pre-adverse action notice; the number of applicants who provided a response to the pre-adverse action notice; the number of applicants who were provided a final adverse action notice; the number of applicants who received a pre-adverse action that were eventually hired; and the number of

applicants who received an adverse action final notice that were eventually hired. 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**

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

B. The prohibitions of this Local Law shall not apply to any law enforcement agency, fire department, or to any other employer hiring for "police officer" and "peace officer" positions, as defined by New York Criminal Procedure Law § 1.20 and § 2.10.

C. The prohibitions of this article shall not apply to any service provider or direct services provider specific to the care or supervision of children, young adults, senior citizens, or the physically or mentally disabled.

D. An employer hiring for positions where certain convictions or violations are a bar to employment in that position under New York State or Federal law, shall not be constrained from asking questions about those convictions or violations.

E. An employer hiring for licensed trades or professions, including positions such as internships and apprentices for such licensed positions, may ask applicants the same questions asked by the trade or professional licensing body, in accordance with New York State law.

### **Section 9. Enforcement**

The Albany County Division of Affirmative Action within the Human Resource Department 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 Division of Affirmative Action shall be made available on the County of Albany website in a manner approved by the Division of Affirmative Action.

The Division of Affirmative Action shall pursue employers that violate this Local Law, investigate all violations of this Local Law, and fine all employers who violate this Local Law with the penalties prescribed in this Local Law.

The Division of Affirmative Action shall develop an adverse action appeal form that shall be made available online on the County of Albany website and shall

make an active effort to distribute it to all relevant departments of Albany County government. The Division of Affirmative Action shall be responsible for conducting proper outreach about this Local Law. The committee to review all appeals to an adverse action taken against an individual shall consist of the Director of Affirmative Action and the members of the Albany County Human Rights Commission. The Director of Affirmative Action shall be responsible for conducting the review, however the Director of Affirmative Action and each member of the Albany County Human Rights Commission shall each receive one vote if a unanimous consensus is not agreed upon. The committee reviewing appeals shall look over the submitted adverse action appeal form, the pre-adverse action notice, the applicant's response to the pre-adverse action, and the adverse action final notice. The committee may also reach out to the employer and the applicant to seek more information. The committee shall make a final decision within three months.

### **Section 10. Audit**

The Division of Affirmative Action 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*