

County of Los Angeles

February 6, 2024

Dawyn R. Harrison
County Counsel

Los Angeles County Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

RE: Proposed Fair Chance Ordinance for Employers**CONFIDENTIAL:**

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Dear Supervisors:

On February 28, 2023, your Board directed our office to prepare a County Fair Chance Ordinance for Employers that included the provisions specified in the directives. In response to your Board's directives our office prepared an ordinance which amends Title 8 – Consumer Protection, Business and Wage Regulations, by adding Division 6 (Worker Protections) and Chapter 8.300 (Fair Chance Ordinance for Employers), to provide equitable protections for individuals with criminal history seeking opportunities for gainful employment in the unincorporated areas of Los Angeles County. The ordinance, if adopted, will:

- Prohibit employers from inquiring regarding criminal history prior to making a conditional job offer, unless legally required;
- Require employers to provide written notice to the applicant containing a statement that the employer has good cause to conduct a review of criminal history for the job position, with supporting justification, before conducting a criminal background check;
- Prohibit employers from reviewing criminal history that is older than seven years from the date of disposition, with limited exceptions for positions that involve providing services or care to minors, dependents, or persons 65 years or older; or positions involving services relating to public funds or benefits;

- Require an employer to conduct a written individualized assessment of whether the person's criminal history has a direct, adverse and negative bearing on the person's ability to perform the duties of the job before taking any adverse action against an applicant or employee;
- Establish the Department of Consumer and Business Affairs as the County administrative enforcement agency with authority to receive and investigate complaints of Fair Chance violations under this ordinance, and make findings and issue penalties, where appropriate;
- Set penalties and administrative fines for employer violations of the ordinance;
- Create a private right of action against employers for violations of the ordinance; and
- Become operative on September 3, 2024.

Attached is the analysis and ordinance for your consideration.

Very truly yours,

DAWYN R. HARRISON
County Counsel



By
WENDY SHA
Senior Deputy County Counsel

APPROVED AND RELEASED:



NICOLE DAVIS TINKHAM
Chief Deputy

NDT:WS:gl

ANALYSIS

This ordinance amends Title 8 – Consumer Protection, Business and Wage Regulations, by adding Division 6 (Worker Protections) and Chapter 8.300 (Fair Chance Ordinance for Employers), in order to provide equitable protections for individuals with criminal history seeking opportunities for gainful employment in the unincorporated areas of Los Angeles County.

DAWYN R. HARRISON
County Counsel

By 
WENDY SHA

Senior Deputy County Counsel

WS:gr

Received: 1/30/24
Revised: 2/2/24

ORDINANCE NO.

An ordinance amending Title 8 – Consumer Protection, Business and Wage Regulations of the Los Angeles County Code, implementing the Fair Chance Ordinance for Employers.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Division 6 is hereby added to read as follows:

DIVISION 6 – WORKER PROTECTIONS

SECTION 2. Chapter 8.300 is hereby added to read as follows:

CHAPTER 8.300 – FAIR CHANCE ORDINANCE FOR EMPLOYERS

8.300.010 **Title**

8.300.020 **Findings and Purpose**

8.300.030 **Policy**

8.300.040 **Definitions**

8.300.050 **Fair Chance Process in Hiring and Employment**

Decisions

8.300.060 **Timelines Relating To Mail and Email Delivery Of**

Employer Notices and Applicant Or Employee Response

8.300.070 **Notice and Posting Requirements For Employers**

8.300.080 **Records Retention Period**

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8.300.100 **Administrative Implementation and Enforcement**

8.300.110 **Civil Actions and Liability**

8.300.120 **Other Legal Requirements**

8.300.130 **Operative Date**

8.300.010 **Title**

This Chapter shall be known as the "Fair Chance Ordinance for Employers."

8.300.020 **Findings and Purpose**

The Board of Supervisors finds and declares:

About one (1) in five (5) Californians have a criminal record, compared with about one (1) in three (3) Americans. Formerly incarcerated individuals in the United States have an average unemployment rate of over twenty-seven (27) percent, much higher than that of the general population during any historical period, including the Great Depression. Despite research finding that employment for formerly incarcerated individuals can enhance public safety outcomes, and system-impacted individuals perform the same as or better than employees without criminal records and are more loyal to their employers than their counterparts, they continue to face tremendous barriers in finding gainful employment.

The rate of employers conducting background checks has risen, which has impacted rates of employment for system-impacted individuals, and implicitly normalized the assumption that, despite known racial biases in policing and the criminal legal system, those convicted of a crime are to be viewed with suspicion even after returning from incarceration.

In California, the Fair Chance Act ("FCA") Assembly Bill 1008, codified in Government Code section 12952, was enacted in 2018 to level the playing field for

applicants who may be qualified but are often overlooked due to a prior conviction. Under the FCA, it is illegal for most employers in California (with five or more employees) to ask about an applicant's criminal record before making a job offer. Employers cannot include questions about an applicant's criminal record in their recruitment ads, applications, or during a job interview.

The County of Los Angeles ("County") has long engaged in work to educate and inform businesses and workers of the protections under the FCA. For example, in August 2019, the County launched a comprehensive education and outreach strategy known as the Fair Chance Hiring Campaign ("FCHC") and Fair Chance Pledge to increase awareness of the FCA and reduce the stigma associated with hiring system-impacted individuals.

Since the passage of the FCA, State and local jurisdictions have identified issues with its implementation and attempted to strengthen its enforcement. Ensuring individuals with criminal records have fair and equitable access to opportunities for gainful employment is critical to making communities safer and achieving rehabilitative outcomes. An ordinance in the County with additional protections and enforcement mechanisms is an important step towards ensuring meaningful implementation of Fair Chance policies in the County and removing barriers to employment that undermine the County's efforts to realize the Care First vision.

8.300.030 Policy

It is the policy of the County to overcome the stigma and unfair biases associated with persons with criminal records when employers are making hiring and employment

decisions, and to ensure individuals with criminal history have fair and equitable access to opportunities for gainful employment in Los Angeles County. The Fair Chance Ordinance for Employers has been enacted to achieve this policy, which enhances public health, makes communities safer, and achieves rehabilitative outcomes.

8.300.040 Definitions

As used in this Chapter, and for the purposes of this Ordinance, the following words and phrases shall have the meanings indicated herein:

A. "Adverse Action" means an Employer's action or decision that materially and adversely affects the terms, conditions, or privileges of Employment of an Applicant or Employee, including but not limited to, the failure or refusal to employ an Applicant to an Employment position or to withdraw, rescind or cancel a Conditional Offer of Employment made to an Applicant; an Employer's failure or refusal to promote an Employee; or an Employer's decision to discharge an Employee due to Criminal History. An Adverse Action may also include Employment decisions relating to reassignment, training, discipline, lay-off, and termination.

B. "Applicant" means an individual who submits an application or other document for Employment with an Employer. This includes an Employee who is applying for a promotion with their current Employer.

C. "Awarding Authority" means any subordinate or component entity or person of the County, such as a department, that has the authority to award or enter into a Contract.

D. "Business Days" means any day except Saturday or Sunday, or any day which is a federal, State or local legal holiday.

E. "Contract" means any agreement, franchise, lease or concession, including agreements for any occasional professional or technical personal services, for the performance of any work or service, the position of any materials or supplies, or the rendition of any service to the County or to the public, which is let, awarded or entered into with, or on behalf of the County or any Awarding Authority thereof. "Contract" does not include (1) agreements entered into pursuant to settlement of legal proceedings or claims, or (2) contracts for urgent litigation expenses and/or consultant services entered into by County Counsel.

F. "Contractor" means any Employer that enters into a Contract with the County.

G. "Criminal Background Check Report" means any Criminal History report or conviction history report, including but not limited to, those produced by the California Department of Justice, including Criminal Offender Record Information ("CORI"); the Federal Bureau of Investigation; other law enforcement or police agencies; the courts; or consumer reports such as background checks, by any consumer reporting agency or business, or employment screening agency or business.

H. "Conditional Offer of Employment" means an Employer's offer of Employment to an Applicant conditioned on completion of certain specified requirements or conditions, including, but not limited to, background checks, reference checks, training, certification, drug testing, or medical exams.

I. "Conviction" means a record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor, provided the person was placed on probation, fined, imprisoned or paroled because of the Conviction.

J. "Criminal History" means information regarding one or more Convictions or Unresolved Arrests, transmitted orally or in writing or by any other means, and obtained from any source, including but not limited to, the Applicant or Employee to whom the information pertains or from a Criminal Background Check Report.

K. "County" means the County of Los Angeles.

L. "DCBA" means the County of Los Angeles Department of Consumer and Business Affairs.

M. "Director" means the Director of the DCBA or their designee.

N. "Final Notice of Adverse Action" means the written notice provided by the Employer to the Applicant or Employee upon the Employer making a final decision to withdraw the Conditional Offer of Employment or take any other Adverse Action, after performing the Second Individualized Assessment.

O. "Employee" means any individual whose Employment position involves, or in the case of an Applicant to an Employment position will involve, performing at least two (2) hours of work on average each week within the unincorporated areas of the County.

P. "Employer" means any individual, firm, corporation, partnership, labor organization, group of persons, association, or other organization however organized, is

located or doing business in the unincorporated areas of Los Angeles County, and employs five (5) or more Employees regardless of location, including the owner or owners and management, supervisory employees, and any person providing services pursuant to a contract in furtherance of an Employer's business enterprise. "Employer" includes job placement, temporary agency, referral agencies and other employment agencies as well as non-profit organizations. Employer also includes any entity that evaluates an Applicant's or Employee's Criminal History on behalf of an Employer, or acts as an agent of an Employer, directly or indirectly, in evaluating an Applicant's or Employee's Criminal History. "Employer" does not include the County, its departments, any other local governmental agency or unit, or any unit of the state government or the federal government.

Q. "Employment" means any occupation, vocation, job, or work, including but not limited to temporary or seasonal work, part-time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency, including non-profit organizations, or any form of vocational or educational training with or without pay. Employment also means work or services provided pursuant to a contract for an Employer in furtherance of an Employer's business enterprise, such as in the case of independent contractors or freelancers. The physical location of the Employment must be within the unincorporated areas of Los Angeles County, including when a person is working remotely, teleworking or telecommuting from a location within the unincorporated areas of the County.

R. "Evidence of Rehabilitation or Mitigating Circumstances" may include, but is not limited to:

1. A person's satisfactory compliance with all terms and conditions of parole and/or probation (however, inability to pay fines, fees, and restitution due to indigence shall not be considered noncompliance with terms and conditions of parole and/or probation).

2. The length or consistency of employment history before and after the offense or conduct.

3. Consideration of the age of the person at the time of the Conviction.

4. Employer recommendations, especially concerning a person's post-conviction employment.

5. Educational attainment or vocational or professional training since the Conviction, including training received while incarcerated.

6. Completion of or active participation in rehabilitative treatment (e.g., alcohol or drug treatment).

7. Additional participation in self-improvement efforts, including but not limited to, job training, counseling, and community service.

8. Supporting documents, such as letters of recommendation from community organizations, counselors or case managers, teachers, community leaders, or parole/probation officers who have observed the individual since their Conviction; and/or other documents demonstrating rehabilitation or mitigating circumstances.

9. Examples of additional mitigating factors offered voluntarily by the person may include but are not limited to: explanation of how prior events or conditions, including but not limited to, homelessness, coercive conditions, trauma, domestic or dating violence, sexual assault, human trafficking, duress, intimate physical or emotional abuse, or untreated substance abuse or mental illness contributed to the Criminal History.

S. "Initial Individualized Assessment" means an Employer's first assessment that is documented in writing, of whether the Applicant's or Employee's Criminal History has a direct, adverse and negative bearing on that person's ability to perform the duties or responsibilities necessarily related to the Employment position, such that it justifies denying the Applicant or Employee the Employment position or justifies taking an Adverse Action against an Employee.

T. "Inquire" shall mean any direct or indirect conduct intended to gather Criminal History information from or about an Applicant or an Employee, using any mode of communication, including but not limited to application forms, interviews, internet searches, and Criminal Background Check Reports. The definition of "Inquire" does not include circumstances where an Employer includes on a job posting or application that the Employer is specifically seeking to hire an individual with "lived experience" in incarceration or the criminal justice system as a desired job qualification or job requirement for the Employment position. The definition of "Inquire" also does not include an Employer requesting the Applicant complete an IRS form 8850 ("Pre-Screening Notice and Certification Request for the Work Opportunity Credit") or its

equivalent, before a Conditional Offer of Employment is made, so long as the information gathered is used solely for the purpose of applying for the Federal Work Opportunity Tax Credit, and the Employer does not ask or require the Applicant or Employee to specifically identify themselves as a person with Criminal History or as having had prior criminal Convictions.

U. "Ordinance" means the Fair Chance Ordinance for Employers.

V. "Preliminary Notice of Adverse Action" shall mean the initial notice provided by the Employer to the Applicant or Employee after performing the Initial Individualized Assessment, which states the Employer intends to withdraw or rescind a Conditional Offer of Employment and/or take any other Adverse Action, which shall be provided both via regular mail and email, if email address is available.

W. "Second Individualized Assessment" shall mean the second written assessment performed by the Employer following the timely receipt of any evidence and/or information provided by the Applicant or Employee in response to the Preliminary Notice of Adverse Action, using the same factors as required under the Initial Individualized Assessment, and also requiring the consideration of any evidence and/or information provided by the Applicant or Employee in response to the Preliminary Notice of Adverse Action, including any Evidence of Rehabilitation or Mitigating Circumstances, and any documents disputing the accuracy of the Criminal Background Check Report or Criminal History information, and/or providing any explanation regarding Criminal History information.

X. "Subcontractor" means any Employer that enters into a contract with a Contractor or Subcontractor to assist in performing the services to the County under a Contract.

Y. "Unresolved Arrest" means an arrest for which the Employee or Applicant is out on bail or on their own recognizance pending trial.

8.300.050 Fair Chance Process in Hiring and Employment

Decisions

A. Unless legally required, conducting a criminal background check or inquiry regarding the Criminal History information of an Applicant or Employee in connection with hiring or continued employment is voluntary for an Employer.

B. Job Postings and Announcements. Employers shall not prevent or discourage Applicants or Employees with Criminal History to apply or respond to job solicitations, postings, announcements and advertisements, including with regard to the following:

1. In all job solicitations, bulletins, postings, announcements and advertisements, an Employer will include language stating that qualified Applicants with arrest or Conviction records will be considered for Employment in accordance with the Los Angeles County Fair Chance Ordinance for Employers and the California Fair Chance Act.

2. Employers will not include statements in job solicitations, bulletins, postings, announcements, and advertisements that no persons with Criminal History will be considered for hire or should not apply to the Employment position and will not

include phrases such as "No Felons," or "No Convictions." An Employer may include language such as or similar to: "Background Check Required," but is prohibited from including phrases such as "Must Have Clean Background" or "Must Pass Background Check." Nothing in this Paragraph prohibits an Employer from stating that a law or regulation limits or prohibits the hiring of individuals with certain specified Criminal History, consistent with Paragraph 3 below.

3. If the Employer is required by local, State or federal law or regulation to restrict or prohibit the hiring of individuals with certain specified Criminal History for the job position, the Employer must specify in all job solicitations, bulletins, postings, announcements, and advertisements, any and all such laws or regulations that impose restrictions or prohibitions for Employment due to Criminal History.

4. If the Employer intends to conduct a review of an Applicant's or Employee's Criminal History in connection with a Conditional Offer of Employment, the Employer must include in any job solicitations, bulletins, postings, announcements, or advertisements, a list of all material job duties of the specific job position which the Employer reasonably believes that Criminal History may have a direct, adverse and negative relationship potentially resulting in the withdrawal of the Conditional Offer of Employment.

C. Prohibited Inquiries Prior to Conditional Offer of Employment. Unless legally required to do so, Employers are prohibited from making an inquiry regarding Criminal History prior to extending an Applicant or Employee a Conditional Offer of

Employment, including but not limited to, during the application and interview process, as follows:

1. An Employer will not by any means, inquire about, consider, disseminate, distribute or require disclosure of an Applicant's or Employee's Criminal History.
2. Employers will not encourage, ask, or make opportunities for Applicants or Employees to voluntarily disclose information about their Criminal History.
3. An Employer will not end a job interview or reject an application based on Criminal History information that was prematurely provided by the Applicant or Employee, or learned from any other source.
4. Employers will not end a job interview or reject an application because the Applicant or Employee did not provide Criminal History information.
5. Employers who violate the prohibition on inquiring regarding Criminal History prior to making a Conditional Offer of Employment may not use an Applicant or Employee's failure to disclose Criminal History, refusal to answer a question regarding Criminal History, or provision of incomplete or inaccurate information regarding Criminal History in response to the Employer's prohibited inquiry as a basis for a subsequent Adverse Action following a Conditional Offer of Employment, including denying the Applicant or Employee the Employment position or withdrawing, rescinding and/or cancelling a Conditional Offer of Employment.

D. Notice of Intent to Conduct Background Check. In connection with a Conditional Offer of Employment, if the Employer intends to conduct a review of an

Applicant's or Employee's Criminal History information, the Employer must provide notice in writing to the Applicant or Employee that includes the following:

1. A statement that the Conditional Offer of Employment is contingent upon the review of the individual's Criminal History.

2. A statement that the Employer has good cause to conduct a review of Criminal History for the specific job position with supporting justification provided in writing. A general statement that the Employer is performing a review of Criminal History due to "safety concerns" without more supporting justification is not sufficient to meet this requirement. An Employer establishes good cause if it can demonstrate any of the following:

- a. The Employer faces a significant risk to its business operations or business reputation unless a review of Criminal History is conducted for the specific job position; or

- b. A review of Criminal History is necessary for the specific job position due to articulable concerns regarding the safety of, or risk of harm or harassment to, the Employer's staff, Employees, contractors, vendors, associates, clients, customers, or the general public.

3. If the Employer is reviewing additional information, background or history in addition to Criminal History as part of the Applicant or Employee's background check process in connection with a Conditional Offer of Employment, a complete list of all types of information, background or history that will be reviewed by the Employer, including but not limited to: education, social media history, employment history, motor

vehicle or driving history, reference checks, credit history, license or credential verification, drug testing, or medical examinations.

E. Prohibited Inquiries Prior to Receipt of Criminal Background Check Report. Following a Conditional Offer of Employment, if the Employer will be obtaining a Criminal Background Check Report regarding the Applicant or Employee, the Employer may not ask or request that the Applicant or Employee provide information either orally or in writing regarding the Applicant or Employee's Criminal History, Unresolved Arrests or prior Convictions, including by requesting that the Applicant or Employee fill out a Criminal History Questionnaire or similar form, prior to the Employer's receipt of the Criminal Background Check Report. An Employer must provide a copy of the Criminal Background Check Report to the Applicant or Employee before an Employer discusses any Criminal History information with the Applicant or Employee or requests further Criminal History information from the Applicant or Employee.

F. Prohibition of Consideration of Certain Types of Criminal History. An Employer shall not, at any time or by any means, inquire about, require disclosure of, or if such information is received, base an Adverse Action in whole or in part on the following types of Criminal History:

1. An arrest not followed by Conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of section 432.7 of the California Labor Code. This paragraph does not prohibit an inquiry into an Unresolved Arrest.

2. Referral to or participation in a pretrial or posttrial diversion program or a deferral of judgment program.

3. Convictions that have been sealed, dismissed, expunged, inoperative, invalidated, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a pardon or has been issued a certificate of rehabilitation.

4. An arrest, detention, processing diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of the juvenile court.

5. A non-felony Conviction for possession of marijuana that is two or more years old.

6. A Conviction that is more than seven (7) years old, which is measured from the date of disposition. This limitation will not apply where the Applicant or Employee is or will be:

a. Providing care or services to a minor; in contact with minors as part of their specific job duties; or has supervisory or disciplinary authority over a minor, which includes executive or management positions;

b. Providing care or services to a dependent adult; in contact with a dependent adult as part of their specific job duties; or has supervisory or disciplinary authority over a dependent adult, which includes executive or management positions. "Dependent adult" has the same meaning as is defined in California Welfare and Institutions Code section 15610.23 or any successor state law;

c. Providing support services or care to a person sixty-five (65) years or older; or has supervisory authority over a person sixty-five (65) years or older, which includes executive or management positions; or

d. Providing services relating to the administration of public funds or public benefits, including eligibility for public funds or public benefits, provided the Conviction is related to illegal access to funds or negotiable instruments, including but not limited to, fraud, bribery, forgery, embezzlement, receipt of stolen property, theft and/or robbery.

7. Information pertaining to an offense other than a felony or misdemeanor, such as an infraction, except that an Employer may inquire about, require disclosure of, base an Adverse Action on, or otherwise consider an infraction contained in an Applicant or Employee's driving record if driving is more than a *de minimis* element of the job position.

8. A Conviction that arises out of conduct that has been decriminalized since the date of the Conviction, including but not limited to, decriminalized conduct related to the noncommercial use and cultivation of cannabis.

G. Initial Individualized Assessment. If an Employer intends to deny an Applicant or Employee a position of Employment, rescind a Conditional Offer of Employment made to an Applicant, or take any other Adverse Action against an Employee, solely or in part because of the Applicant's or Employee's Criminal History, the Employer must first conduct an Initial Individualized Assessment that is documented in writing, of whether the Applicant's or Employee's Criminal History has a direct,

adverse and negative bearing on the Applicant's or Employee's ability to perform the duties or responsibilities necessarily related to the applied-for position, such that it justifies denying the Applicant or Employee the Employment position or justifies taking an Adverse Action against an Employee.

1. The Initial Individualized Assessment must include at a minimum, consideration of the following factors:

a. The nature and gravity of the offense or conduct, including but not limited to, consideration of whether the harm was to property or people, the degree or severity of the harm or offense, the age of the Applicant or Employee when the conduct occurred, and the permanence of the harm or offense;

b. The time that has passed since the offense or conduct and/or completion of the sentence;

c. The nature of the Employment position sought or held, including consideration of the specific duties of the job, whether the Employment position offers the opportunity for the same or a similar offense to occur, and whether circumstances leading to the conduct for which the person was convicted or that is the subject of an Unresolved Arrest will recur in the Employment position; and

d. If the Applicant or Employee voluntarily provides to the Employer any Evidence of Rehabilitation or Mitigating Circumstances before or during the Initial Individualized Assessment, that evidence must also be considered as part of the Initial Individualized Assessment.

2. Rebuttable Presumption for Licenses, Certificates, or Any Other Similar Credentials. If the Applicant or Employee has obtained a license, certificate, authorization, or any other similar credential from a licensing, regulatory, or other government agency or board required for the applied-for job position, it will be presumed the Applicant or Employee's Criminal History is not directly, adversely and negatively related to the specific duties of the job position. In order to rebut this presumption, an Employer must provide an explanation in the Initial Individualized Assessment that the Applicant or Employee's Criminal History has a direct, adverse and negative bearing on the ability to perform the necessary duties or responsibilities of the job position such that it substantially outweighs the fact that the Applicant or Employee obtained the license, certificate, or any other similar credential for the job position.

3. Delay in Receipt of Criminal Background Check Report. An Employer cannot base a decision to rescind or withdraw a Conditional Offer of Employment solely on the fact that there has been a delay in receiving a Criminal Background Check Report of the Applicant or Employee requested by the Employer from any source, unless the Employer can demonstrate it would have suffered an undue burden in its business operations if the Employer continued to hold the job position open pending receipt of the Criminal Background Check Report, and ten (10) Business Days have passed since the time the Employer requested the Criminal Background Check Report. The Employer must disclose to the Applicant or Employee in the Preliminary Notice of Adverse Action pursuant to subsection (I) below that the Conditional Offer of Employment has been rescinded due to the delay in receiving the Criminal Background

Check Report, and explain the reasons why it is an undue burden for the Employer to continue to wait for receipt of the Criminal Background Check Report, and must follow all notice and response procedures consistent with this Section 8.300.050, including with regard to Subsections J, K, and L.

H. Exceptions to the Prohibition on Inquiry regarding Criminal History for Specified Job Positions. Subsections B(1) and (4), C, D, E and F of this Section 8.300.050 do not apply to the following job positions or in the following circumstances, however, an Employer must still comply with subsections G, I, J, and K of this Section 8.300.050, covering the Initial Individualized Assessment, Preliminary Notice of Adverse Action, Second Individualized Assessment, and Final Notice of Adverse Action Fair Chance processes for any and all job positions that fall within the exceptions of this subsection:

1. To a position where an Employer is required by any state, federal, or local law or regulation to conduct criminal background checks, Inquire regarding Criminal History, or to restrict Employment based on Criminal History for Employment purposes.
2. To a position where any state, federal, or local law or regulation prohibits an Employer from employing a person with a specific Criminal History.
3. To a position where the Applicant or Employee would be required to possess or use a firearm in the course of their Employment.
4. To a position as a Farm Labor Contractor, as described in section 685 of the California Labor Code.

5. To a position designated by the Employer to participate in a federal, state, or local government program to encourage the employment of people with Criminal History, or to a position in which the Employer is specifically seeking to hire an individual with "lived experience" in incarceration and/or the criminal justice system as a desired job qualification or job requirement for an Employment position.

I. Preliminary Notice of Adverse Action. If after performing the Initial Individualized Assessment, the Employer intends to withdraw or rescind a Conditional Offer of Employment and/or take any other Adverse Action, the Employer shall provide the Applicant or Employee with a Preliminary Notice of Adverse Action.

1. The Preliminary Notice of Adverse Action must be sent to the Applicant or Employee via both regular mail and email, if an email address is available, containing the following information:

a. Notice that the Employer intends to withdraw or rescind the Conditional Offer of Employment and/or take any other Adverse Action due to the Applicant's or Employee's Criminal History;

b. An explanation of the Applicant's or Employee's right to respond to the Preliminary Notice of Adverse Action before that decision becomes final, including information regarding: 1) the waiting periods and timelines to respond as specified in subsection I(2) of this Section 8.300.050 and Section 8.300.060, which must be displayed in bold font, underlined, or in all capital letters (All-Caps); and 2) the response may include evidence challenging the accuracy of the Criminal Background

Check Report or other Criminal History information, and/or voluntary submission of Evidence of Rehabilitation or Mitigating Circumstances;

i. For job positions exempted pursuant to subsection H, if the Employer is required by law or regulation to exclude or restrict individuals with specified Criminal History and/or specific criminal convictions from the job position, the Employer's explanation of the Applicant's or Employee's right to respond to the Preliminary Notice of Adverse Action is limited to evidence challenging the accuracy of the Criminal Background Check Report or other Criminal History information, or evidence or explanation addressing discrepancies regarding Criminal Background Check Reports and other Criminal History information.

c. A copy of the Initial Individualized Assessment;

d. Notice of the disqualifying Conviction(s) that are the basis for the intended Adverse Action; and

e. A copy of the Criminal Background Check Report(s) obtained by the Employer, if any, and any other information or documentation relating to the Applicant's or Employee's Criminal History obtained by the Employer, including but not limited to, information or documentation obtained from internet searches, court records, news articles, and/or social media content.

2. Waiting Period(s) prior to Employer Taking Adverse Action. The Applicant or Employee shall have at least five (5) Business Days to respond to the Preliminary Notice of Adverse Action before the Employer can make a final decision on whether to withdraw the Conditional Offer of Employment and/or take an Adverse

Action. If, however, within the five (5) Business Days described above, the Applicant or Employee notifies the Employer in writing that they: 1) dispute the accuracy of the Criminal Background Check Report or Criminal History information that was the basis for the Preliminary Notice of Adverse Action and that the Applicant or Employee is taking specific steps to obtain evidence supporting that assertion; and/or 2) the Applicant or Employee needs additional time to obtain written Evidence of Rehabilitation or Mitigating Circumstances, then the individual shall be provided at least ten (10) additional Business Days to respond to the Preliminary Notice of Adverse Action.

a. In lieu of submission of any written materials and/or documents, upon the Applicant's or Employee's request, an Employer shall provide the Applicant or Employee with an opportunity to present Evidence of Rehabilitation or Mitigating Circumstances orally to the Employer, via in-person, virtual or telephone contact, if the Applicant or Employee makes the request within five (5) Business Days from receipt of the Preliminary Notice of Adverse Action. The meeting with the Applicant or Employee and the Employer shall take place within ten (10) Business Days of the request to present Evidence of Rehabilitation or Mitigating Circumstances orally. This paragraph does not apply to Employers who are required by law or regulation to exclude or restrict individuals with specified Criminal History and/or specific criminal Convictions from the job position, pursuant to subsection H; and

b. Any Evidence of Rehabilitation or Mitigating Circumstances is optional and may only be voluntarily provided by the Applicant or Employee, or by a third party on their behalf. An Employer cannot require an Applicant or Employee to

provide any specific type of additional evidence or document of rehabilitation or mitigation.

3. The Employer cannot take any Adverse Action or fill the Employment position sought by the Applicant or Employee until five (5) Business Days have passed from the time the individual received the Preliminary Notice of Adverse Action and the Employer has not received any response from the Applicant or Employee, or if the Applicant or Employee timely responds to the Preliminary Notice of Adverse Action, until such time that the Employer issues the Final Notice of Adverse Action to the Applicant or Employee pursuant to subsection K below of this Section 8.300.050.

J. Employer's Consideration of Applicant or Employee Response and Second Individualized Assessment. The Employer shall consider all information and documents, whether written or oral, timely submitted by the Applicant or Employee pursuant to this Section before making a final decision or taking an Adverse Action. The Employer will perform a Second Individualized Assessment, which shall be documented in writing, concerning whether the individual's Criminal History has a direct, adverse and negative bearing on that person's ability to perform the duties or responsibilities necessarily related to the applied-for job position, such that it justifies denying the Applicant or Employee the Employment position or justifies taking an Adverse Action against an Employee, by consideration of the following factors:

1. The nature and gravity of the offense or conduct, including but not limited to, consideration of whether the harm was to property or people, the degree or

severity of the harm or offense, the age of the Applicant or Employee when the conduct occurred, and the permanence of the harm or offense.

2. The time that has passed since the offense or conduct and/or completion of the sentence.

3. The nature of the Employment position sought or held, including consideration of the specific duties of the job, whether the Employment position offers the opportunity for the same or a similar offense to occur, and whether circumstances leading to the conduct for which the person was convicted or that is the subject of an Unresolved Arrest will recur in the Employment position.

4. Any and all Evidence of Rehabilitation or Mitigating Circumstances, whether provided in written form or orally.

5. Any documents disputing the accuracy of the Criminal Background Check Report or Criminal History information, and/or documents or information providing an explanation regarding Criminal History information.

K. Final Notice of Adverse Action. If after performing the Second Individualized Assessment, the Employer makes a final decision to withdraw the Conditional Offer of Employment or take any other Adverse Action, the Employer shall notify the Applicant or Employee in writing both via regular mail and electronic mail, if email address is available, of all the following:

1. Notice that the Employer has made a final decision to withdraw the Conditional Offer of Employment or take Adverse Action against the Applicant or Employee.

2. A copy of the Second Individualized Assessment.
3. Notice of the disqualifying Conviction(s) that are the basis for the final Adverse Action.
4. Information regarding any existing procedure the Employer has for the Applicant or Employee to challenge the decision or request reconsideration.
5. Notice of the Applicant's or Employee's right to file a complaint with the Los Angeles County Department of Consumer & Business Affairs ("DCBA") for violation of the County's Fair Chance Ordinance for Employers, and with the state's Civil Rights Department for violation of the Fair Chance Act.
6. If the Employer is providing the Final Notice of Adverse Action more than thirty (30) calendar days after the Applicant or Employee provided a timely response to the Employer's Preliminary Notice of Adverse Action, it will be presumed the Employer's delay in responding to the Applicant or Employee was untimely, and in violation of this Section. In order to rebut this presumption, the Employer must provide a written explanation in the Final Notice of Adverse Action justifying why the final decision was not made within thirty (30) days, which may include, but is not limited to, circumstances involving a business or personal emergency, or a description of circumstances or delays outside of the Employer's control.

**8.300.060 Timelines Relating To Mail and Email Delivery Of
Employer Notices and Applicant Or Employee Response**

For all notices required to be mailed by an Employer under this Chapter, the following timelines shall apply:

A. If notice is transmitted through a format that does not provide a confirmation of receipt, such as a written notice mailed by an Employer without tracking delivery enabled, the notice shall be deemed received five (5) calendar days after the notice is deposited for delivery to a California address, ten (10) calendar days after the notice is deposited for delivery to an address outside of California, and twenty (20) calendar days after the notice is deposited for delivery to an address outside of the United States;

B. If notice is transmitted through email, the notice is deemed received two (2) Business Days after it is sent; however, Applicant and Employee timelines to respond to the notice will be calculated based on the date the notice was mailed by the Employer; and

C. Any Applicant or Employee response required or permitted under this Chapter will follow the same mail and email timelines as noted above; however, an Applicant or Employee has the option to send a response under this Chapter to an Employer either by mail or email.

8.300.070 Notice and Posting Requirements For Employers

A. Employers shall post a notice informing Applicants and Employees of the provisions of this Ordinance in a conspicuous place at every workplace, job site or other locations in the unincorporated areas of the County under the Employer's control frequently visited by their Employees or Applicants. Employers shall also post the notice on website pages frequently visited by their Employees or Applicants. Employers shall send a copy of the notice to each labor union or representative of workers with

which they have a collective bargaining agreement or other agreement or understanding that is applicable to the Employees in the unincorporated areas of the County. This notice must be made available to Applicants and Employees in English and any other languages spoken by at least ten (10) percent of the Employer's workforce.

B. The DCBA shall, by the operative date of this Ordinance, publish and make available to Employers, in English, Spanish, and any languages spoken by at least ten (10) percent of the County workforce, a notice suitable for posting by Employers in the workplace informing Applicants and Employees of their rights under this Ordinance. The DCBA shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than ten (10) percent of the County workforce.

8.300.080 Records Retention Period

A. Employers must maintain and preserve any and all records, data and documents relating to this Ordinance, including but not limited to, job solicitations, postings, announcements and advertisements, employment applications, individualized assessments, notices, conditional offers, rescission and/or withdrawal letters, and any and all electronic and/or letter correspondence from the Employer, Applicant or third party relating to this Ordinance, for a minimum period of four (4) years following the receipt of an Applicant's Employment application.

8.300.090 Retaliation Prohibited

A. It is unlawful for an Employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Ordinance.

B. It is unlawful for an Employer to refuse to hire an Applicant, or to discharge, demote, suspend or otherwise take Adverse Actions against an Employee in retaliation for exercising rights protected under this Ordinance, including, but not limited to, the right to complain to or file a complaint with the County regarding the Employer's compliance with this Ordinance, the right to cooperate in any investigation or prosecution of any alleged violation of this Ordinance, and the right to participate in any proceedings related to this Ordinance. Taking Adverse Action against an Employee within ninety (90) days of the Employee's exercise of any the above-referenced rights raises a rebuttable presumption of unlawful retaliation pursuant to this Chapter.

8.300.100 Administrative Implementation and Enforcement

A. The DCBA is authorized to take appropriate steps to enforce Chapter 8.300, including conducting investigations of possible violations of this Ordinance by an Employer.

B. Complaint. An Applicant or Employee alleging that an Employer has violated any of the provisions of this Ordinance may, within one (1) year of the alleged violation, file a complaint with the DCBA of the alleged violation, and DCBA shall investigate the complaint. The complaint should state sufficient facts supporting the alleged violation, including, but not limited to, a description of events, relevant dates, locations or addresses, and identification of involved persons or entities.

C. Investigation and Access to Records. Upon receipt of a complaint under this Chapter, or if the DCBA has reason to believe that an Employer may be in violation of any provision of this Ordinance, the DCBA will conduct an investigation into the alleged violation. The DCBA shall have access to all workplaces subject to this Ordinance during business hours to inspect books and records, to interview persons, including Employees, and to investigate such matters necessary or appropriate to determine whether an Employer has violated any provisions of this Chapter.

D. Subpoenas. The Director of the DCBA shall have authority to issue subpoenas for documents and to conduct examinations of persons as witnesses under Government Code section 53060.4 for the purpose of enforcing this Chapter. Each subpoena shall be prepared in consultation with County Counsel and, upon issuance, the Director shall notify the Board of Supervisors of the subpoena.

E. Notices to Correct. If, during the course of an investigation, the DCBA has determined a violation of this Chapter has occurred, the DCBA may issue and serve a Correction Order on the Employer immediately. The Correction Order shall identify the violation to be corrected and a reasonable amount of time to correct the violation.

F. Findings and Determination. Upon completion of an investigation, if DCBA determines a violation of this Chapter has occurred, the DCBA shall issue a written notice to the Employer of the violation, and if appropriate, require the Employer to immediately cure the violation, and impose an administrative penalty as set forth in this Section and/or order any appropriate relief.

G. Rulemaking Authority. The DCBA shall establish rules and regulations governing the administrative process for the filing of a complaint, investigation, enforcement, and appeals under this Chapter, which shall be presented to the Board of Supervisors and become effective if approved by the Board. The DCBA shall establish rules and regulations applicable to all Employers, including those Employers who are also County Contractors and Subcontractors. Upon Board approval, the rules and regulations will be published and made available to all applicable Employers, Employees, and Applicants, and the general public, and will include procedures for the following:

1. Providing the Applicant or Employee with notice of receipt of complaint.
2. Providing the Applicant or Employee with the option to forgo having the DCBA investigate the complaint and instead bring a civil action in a court of competent jurisdiction against the Employer upon the timely submission of an intent-to-sue notice to the DCBA, which will allow the Applicant or Employee to bring a civil action against the Employer within one (1) year from the date of the notice.
3. Providing notice of an alleged violation to the Employer.
4. Providing the Employer with the opportunity to respond to the notice.
5. Procedures for resolution or settlement of complaints.
6. Providing notice to the Employer and to the Applicant or Employee of the DCBA's determination and supporting documentation.

7. Providing the Employer and the Applicant or Employee the opportunity to appeal the DCBA's determination to a hearing officer. The hearing officer's decision shall constitute the County's final decision, and any review of that decision shall be made by the filing of: 1) an appeal regarding the imposition of any penalties under this Chapter pursuant to section 53069.4 of the Government Code; and/or 2) a petition for writ of mandate under section 1094.5 of the Code of Civil Procedure, in the Superior Court of the County of Los Angeles.

8. Developing a plan for education, training and awareness of the Ordinance, including for Employers, Employees and Applicants.

H. Penalties and Other Relief for Violation of the Ordinance. If the DCBA determines that a violation under this Chapter has occurred, it, within its discretion, may issue a determination and order any appropriate relief.

1. The DCBA may issue administrative penalties for violation of this Ordinance, with no less than half of the penalties collected by the DCBA shall be awarded to the aggrieved Applicant or Employee, as follows: For a first violation, a penalty of up to five thousand dollars (\$5,000) for each aggrieved Applicant or Employee; for a second violation, a penalty of up to ten thousand (\$10,000) for each aggrieved Applicant or Employee, and a penalty of up to twenty thousand (\$20,000) for the third and subsequent violations for each aggrieved Applicant or Employee.

a. For purposes of determining the penalty or administrative fine to be imposed under this Ordinance, if multiple Employees or Applicants are

impacted by the same procedural violation at the same time, the violation shall be treated as one violation for each impacted Employee or Applicant; and

b. The DCBA will assess the amount civil penalties issued against an Employer based on the following factors: the severity of the violation; the existence of prior or contemporaneous violations of this Chapter; the employer's size, including both the total number of employees and business revenue; and whether or not the Employer knew or should have known about the Ordinance.

2. County Licenses. The DCBA may recommend any license issued by the County or any departments thereof, or the application for, or renewal or transfer of, a license of an Employer determined to be in violation of this Chapter be suspended, revoked, or denied. In evaluating whether a license should be recommended for suspension, revocation, or denial, the DCBA may take into consideration appropriate factors including, but not limited to, the seriousness of the violation, whether the Employer has timely cured the violation upon appropriate notice, whether the Employer has engaged in prior or contemporary violations of the Ordinance or similar statutes, and/or whether any amounts due to Applicants or Employees or the County as a result of the violation were timely paid. The decision to suspend, revoke, or deny a license based on a recommendation from the DCBA shall be made by the department issuing the license and done in accordance with applicable law.

3. Payments to the County; Due Date; Late Payment Fee. Administrative penalties payable to the County are due within thirty (30) days from the date of DCBA's issuance of the penalty. The failure of any Employer to pay an

administrative penalty within thirty (30) days shall result in the assessment of an additional late fee. The amount of the additional late fee shall be ten (10) percent of the total amount of the administrative penalty assessed for each month the amounts are unpaid, compounded to include already accrued late administrative penalties that remain unpaid.

4. Collections of Amounts Due. The failure of any Employer to pay amounts owed to the County under this Chapter when due shall constitute a debt to the County. The County may file a civil action or, to the extent permissible under State law, create and impose a lien against any property owned or operated by an Employer for violation of this Ordinance, or pursue any other legal remedy to collect amounts owed to the County.

5. Successor Liability. If any Employer ceases its business operations, sells out, exchanges, or otherwise disposes of the Employer's business or stock of goods, then any person who becomes a successor to the business shall become liable for the unpaid amounts owed to the County for violation of this Chapter if, at the time of the conveyance of the business, the successor has actual knowledge of the fact and amounts owed to the County for violation of this Chapter.

6. Interest. In any administrative or civil action brought for the amounts owed under this Chapter, the DCBA or the court, shall award interest on all due and unpaid wages, backpay and penalties at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date the amounts were due and payable.

I. County Contractors and Subcontractors. Compliance with this Ordinance shall be required in all Contracts where services will be provided, and each Contract shall provide violation of this Ordinance shall constitute a material breach thereof and entitle the County to terminate the Contract and otherwise pursue all available legal and/or contractual remedies.

1. In addition to the administrative procedures and enforcement measures provided in this Section, if appropriate, the DCBA may request the Awarding Authority declare a material breach of the Contract and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the Contract and the return of any monies paid by the County for services not yet rendered, and/or barring the Contractor or Subcontractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

2. In determining what contractual remedies, if any, should be exercised for a violation of the Ordinance by a Contractor or Subcontractor, the DCBA and/or the Awarding Authority will consider appropriate factors, including but not limited to, the seriousness of the violation, whether the Contractor or Subcontractor has timely cured the violation upon appropriate notice by the DCBA, whether the Contractor or Subcontractor has engaged in prior or contemporary violations of the Ordinance or similar statutes, and/or whether any amounts due to Applicants or Employees or the County as a result of the violation were timely paid.

J. Settlement Authority. The DCBA is authorized to negotiate and approve settlements with Employers where the DCBA determines settlement is in the best interest of the County and affected Applicants and Employees.

1. Settlement agreements must be in writing and signed by the Director of the DCBA or an authorized designee and the Employer. Settlements authorized under this subsection may provide Employers with a repayment plan to be paid overtime. As part of settlement, the DCBA may waive any penalties or fines owed to the County imposed under this Chapter, in whole or in part, if the violation was not willful or the DCBA determines that enforcement of the additional fines would not further the purposes of this Chapter.

K. Effect of Non-appeal of DCBA decision. The failure to appeal DCBA's determination of a violation shall serve as a complete defense for failure to exhaust administrative remedies with regard to any petition, action or claim brought by the Employer against the County regarding the DCBA's determination of a violation.

L. Records. The DCBA shall maintain records relating to complaints it has received under this Chapter, and resolution of complaints, and upon request by the Board of Supervisors, will provide a report summarizing such records.

M. Confidentiality. The DCBA shall encourage reporting and cooperation with investigations by keeping confidential, to the maximum extent permitted by applicable laws, the name, address, and other identifying information of each Applicant or Employee, person reporting a violation, or person aiding an investigation by providing information to the DCBA investigators. Provided, however, with the authorization of

such person, the DCBA may disclose their name and identifying information as necessary to enforce this Chapter or for other appropriate purposes. The DCBA shall also protect proprietary business information to the greatest extent allowed by law.

N. Contracts for Education and Outreach. The DCBA shall have the authority to contract, in accordance with County contracting rules and procedures, with Community Based Organizations, non-profits, consultants, and other related workforce/business organizations or entities for them to assist in the education and outreach related to the Fair Chance Ordinance for Employers.

O. Other Remedies Not Affected. The remedies, fines, penalties, and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, fines, penalties, and procedures. By filing a complaint with the DCBA, an Applicant or Employee is not precluded from being able to recover remedies available to them under any other code, regulation, or law. The procedures established in this Chapter shall be in addition to any other criminal, civil, or other remedy established by law which may be pursued to address violations of this Chapter. An administrative citation issued pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to prosecute a violation or to seek compensation for damages suffered.

8.300.110 Civil Actions and Liability

A. Any Applicant or Employee aggrieved by a violation of this Chapter, may bring a civil action in a court of competent jurisdiction against the Employer, and upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to

remedy the violation including, without limitation, the penalties set forth in this Ordinance, monetary damages, back pay, reinstatement in employment or other appropriate injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Any person or entity enforcing this Chapter on behalf of the public as provided for under applicable State law, upon prevailing, shall be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

1. The Applicant or Employee shall not bring a civil action unless or until the Applicant or Employee has reported the alleged violation to the DCBA and has either submitted an intent-to-sue notice to the DCBA or the administrative enforcement process has been completed or a hearing officer's decision has been rendered as set forth in Section 8.300.100, whichever is later. The Applicant's or Employee's civil action must be filed within one (1) year of the date of the intent-to-sue notice or one (1) year from the later of the completion of the DCBA's enforcement process or the issuance of the hearing officer's decision.

B. Negligent Hiring and Retention Claims. In negligent hiring and negligent retention claims against an Employer, no Employer shall be found liable based on the fact the Employer excluded from its consideration Criminal History information in making hiring and retention decisions that it was prohibited from considering at any time under this Ordinance.

8.300.120 Other Legal Requirements

A. This Ordinance provides the minimum requirements pertaining to the protection of Applicants and Employees and shall not be construed to preempt, limit or

otherwise affect the applicability of any other law, regulation, requirement, policy or standard, or, with regard to employment, any provision of a collective bargaining agreement, that provides for greater or other rights of or protections for Applicants or Employees. This Ordinance shall apply both to laws, regulations, requirements, policies, standards and collective bargaining agreements in existence at the time the Ordinance becomes operative, and to those that come into existence thereafter.

B. Conflicts. Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any State or federal law. Nothing contained in this Chapter shall be construed in any manner so as to prevent the County from pursuing any other remedies that may be available at law, equity or under any Contract.

C. Authority. This Ordinance is adopted pursuant to the police powers vested in the County under the Constitution of the State of California and the County Charter, and is intended to promote the general welfare. The County is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which the County or its directors, officers or employees are liable for damages of any kind, including monetary damages, to any person who claims that such breach proximately caused injury. This Ordinance does not create a legally enforceable right against the County.

D. Severability. If any part or provision of this Ordinance, including, but not limited to, a section, subsection, paragraph, sentence, phrase or word, or the application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the

remainder of this Chapter. The County hereby declares it would have adopted this Chapter, and each and every section, subsection, paragraph, sentence, phrase and word hereof not declared invalid or unconstitutional, without regard to whether any portion of this Ordinance would be subsequently declared invalid or unconstitutional.

8.300.130 Operative Date

The provisions set out in this chapter shall become operative at 12:01 a.m., on September 3, 2024.

[TITLE8DIV6WSCC]