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## **City of Los Angeles Fair Chance Initiative for Hiring Ordinance: Frequently Asked Questions (FAQ)**

This document contains answers to questions that are frequently asked about the City of Los Angeles (City) Fair Chance Initiative for Hiring Ordinance (FCIHO), located at Los Angeles Municipal Code (LAMC) § 189 and Los Angeles Administrative Code (LAAC) § 10.48. The term “Employer” in this FAQ refers to, for purposes of the Municipal Code, a private employer doing business within the City of Los Angeles (LAMC § 189.01), and for the purposes of the Administrative Code, a City Contractor or Subcontractor (LAAC § 10.48.1), unless otherwise noted.

### **1. What is the effective date of the FCIHO?**

The effective date of the FCIHO is January 22, 2017. All Employers must comply with the requirements of the FCIHO commencing on that date. Enforcement of the monetary fines and penalties against Employers under the Municipal Code will not commence until July 1, 2017; however, compliance with the FCIHO is required and Employers may be cited by the City for violations.

### **2. Who is considered an Employer?**

The Municipal Code at LAMC § 189.01(J) defines “Employer” as any individual, firm, corporation, partnership, labor organization, group of persons, association, or other organization however organized, that is located or doing business in the City, and that employs ten or more Employees, including the owner or owners and management and supervisory employees. “Employer” includes job placement and referral agencies and other employment agencies. “Employer” does not include any local governmental unit, or any unit of the state government or the federal government.

The Administrative Code at LAAC § 10.48.1(M) defines “Employer” as any individual, firm, corporation, partnership, labor organization, group of persons, association, or other organization however organized, that enters into a Contract with the City, or a contract with a Contractor or Subcontractor that employs ten or more Employees, including the owner or owners and management and supervisory employees. “Employer” does not include any local governmental unit or any unit of the state government or the federal government.

**3. Which Employers are subject to the FCIHO?**

Employers with ten (10) or more Employees are subject to the FCIHO. An Employer should count Employees as defined by the Ordinances, which would include owners, management, and supervisory staff if they also meet the definition of Employee.

**4. Who is considered an Employee?**

Under the Municipal Code, at LAMC § 189.01(I), “Employee” means any individual who:

- 1) Performs at least two hours of work on average each week within the geographic boundaries of the City for an Employer; and
- 2) Qualifies as an employee entitled to payment of a minimum wage from any Employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

Under the Administrative Code at LAAC § 10.48.1(L), “Employee” means any individual who has Employment with a City Contractor or Subcontractor or with any Employer that enters into a contract with a Contractor or Subcontractor. Employment is defined at LAAC § 10.48.1(N) as any occupation, vocation, job or work performed in the City.

**5. Does the FCIHO apply to Applicants who are applying for positions that are exempt from the state minimum wage?**

Yes, the Municipal Code at § 189.01(B) and the Administrative Code at § 10.48.1(B) define Applicant as an individual who submits an application or other documentation for Employment. The Ordinances make no distinction based on whether the Applicant would be exempt from payment of a California minimum wage or not. However, for the purpose of determining an Employer's number of Employees, the Municipal Code provides that an Employee must, in addition to working at least two hours on average each week within the City of Los Angeles, be entitled to payment of a minimum wage under the state's Labor Code and wage orders.

**6. Does the size of an Employer’s business include employees working outside the City of Los Angeles?**

For purposes of the Municipal Code, an Employee must work at least two hours on average each week within the City of Los Angeles (LAMC § 189.01(I)). For purposes of the Administrative Code, there is no requirement that an Employee work any hours within the city of Los Angeles.

**7. What are the boundaries or zip codes that comprise the City of Los Angeles?**

To determine if a workplace or job site lies within the City limits, you may use Neighborhood Info (<http://neighborhoodinfo.lacity.org/>). Follow the exact instructions of this website. If an address is located within the boundaries of the City and is correctly entered, then the search will locate the address on the map with detailed address information.

**8. Can Employers include a general disclaimer on Employment questions regarding whether an Applicant has a Criminal History such as this:**

**“Applicants for a position located within a Fair Chance jurisdiction are not to answer this question.”?**

Yes, so long as it is made clear that the City of Los Angeles is a Fair Chance jurisdiction and the statement directly follows any application question regarding an Applicant’s Criminal History.

**9. What format should Employers use to state that they will consider qualified Applicants with Criminal Histories in all solicitations or advertisements?**

Below is a sample format that Employers may use:

“We will consider for employment all qualified Applicants, including those with Criminal Histories, in a manner consistent with the requirements of applicable state and local laws, including the City of Los Angeles’ Fair Chance Initiative for Hiring Ordinance.”

**10. How do temporary staffing agencies comply with the requirements surrounding the Conditional Offer of Employment?**

According to LAMC § 189.01(J), "Employer" includes job placement and referral agencies and other employment agencies. LAMC § 189.02(B) states that an Employer shall not, at any time or by any means, inquire about or require disclosure of an Applicant's Criminal History unless and until a Conditional Offer of Employment has been made to the Applicant.

If the Employer intends to inquire about an Applicant's Criminal History, then a Conditional Offer of Employment must have been made to the Applicant. This includes both the placement of the Applicant on a staffing agency's referral or placement list and the Employer's acceptance of the referral or placement.

**11. Does the FCIHO require Employers to conduct a Criminal History check?**

The FCIHO does NOT require an Employer to perform a Criminal History check on an Applicant. The FCIHO requires that a Criminal History check can only be made, if at all, after a Conditional Offer of Employment has been made.

**12. What does the FCIHO require of Employers seeking Applicants over online advertisements or solicitations?**

Employers who place advertisements or solicitations online must state that they will consider for employment qualified Applicants with Criminal Histories in a manner consistent with the requirements of the FCIHO (See [Question #9](#)).

**13. Can Employers advertise that they are seeking or require Applicants with a Criminal History?**

The FCIHO does not prohibit an Employer from advertising that they are seeking or require Applicants with Criminal Histories.

**14. Are there any exemptions that apply to my business?**

Under Regulation #3 – Exception, Employers may assert the application of an exception to defend against enforcement of the FCIHO, and they have the burden of proving the exception by a preponderance of the evidence. The Bureau of Contract Administration (BCA) will investigate if an exception is

applicable to the particular position and will make a determination. BCA will not assume that an exception will apply to all of an Employer's positions.

An Employer claiming an exception must be able to show that the position falls under LAMC § 189.07 or LAAC § 10.48.7. The BCA requires the Employer to keep a record of their use of such exception for a period of three (3) years following the receipt of an Applicant Employment application. Keeping an exception log will help the Employer respond to the BCA's requests for information. The exception log should include the following:

- 1) Which exception(s) is claimed; and,
- 2) How the position fits into the exception and the federal or state law or regulation, or other appropriate legal authority allowing the exception.

The BCA recommends Employers availing themselves of an exception to the FCIHO to inform Applicants of the exception they believe applies.

The FCIHO does not apply to the actions of Employers or their agents that are taken pursuant to any state or federal law or other appropriate legal authority that requires criminal background checks for Employment purposes or bars Employment based on Criminal History. Retaliation and other provisions of the FCIHO may still apply.

**15. Is there an exception in the FCIHO for performing an emergency hire?**

No exceptions exist in the FCIHO for emergency hires. There is no requirement that Employers conduct criminal background checks. However, if an Employer wants to examine an Applicant's Criminal History then they must do so in accordance with the FCIHO.

**16. What if my business requires the Applicant to have a license?**

Licensure - The FCIHO applies to an Employer whose Employees must be licensed or approved by a government agency. In such a case, an Employer can only ask whether an Applicant has the required license or can obtain one within an acceptable period of time. Any inquiry into the Applicant's criminal record – before a Conditional Offer of Employment is made – is not allowed. However, if the governmental licensure or approval requirements provide that Applicants cannot have a Criminal History, then that may constitute an exception under both the Municipal Code (Section 189.07) and the Administrative Code (Section 10.48.7) for inquiring into an Employment Applicant's Criminal History.

***This FAQ is intended as general information only and is not intended to bind the City of Los Angeles in any enforcement action.***

***The Bureau of Contract Administration (BCA) is providing this information as a public service. This information and related materials are presented to provide the public additional information on the implementation of the Los Angeles Fair Chance Initiative for Hiring Ordinance. Please be aware that while the BCA tries to keep the information timely and accurate, there may be a delay between official publications of the materials and the revision of this FAQ. Therefore, the BCA does not make, express, or imply guarantees. The BCA will make every effort to correct errors brought to our attention.***

***The City of Los Angeles can only advise Employers how to comply with the Los Angeles Fair Chance Initiative for Hiring Ordinance. It cannot advise an Employer how to comply with state or federal law.***

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