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AB-1008 Employment discrimination: prior criminal history. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

ASSEMBLY BILL

No. 1008

Introduced by Assembly Members McCarty, Weber, Holden, Gipson, and Reyes

February 16, 2017

An act to add Section 12952 to the Government Code, relating to employment discrimination.

LEGISLATIVE COUNSEL'S DIGEST

AB 1008, as introduced, McCarty. Employment discrimination: prior criminal history.

Existing law, the California Fair Employment and Housing Act, prohibits an employer from engaging in various defined forms of discriminatory employment practices.

Existing law prohibits an employer, whether a public agency or private individual or corporation, from asking an applicant for employment to disclose, or from utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, or information concerning a referral or participation in, any pretrial or postural diversion program, except as specified.

This bill would provide it is an unlawful employment practice for an employer to include on any application for employment any question that seeks the disclosure of an applicant's criminal history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate specified information related to prior criminal convictions, except as provided.

This bill would also require an employer who intends to deny an application a position of employment solely or in part because of the applicant's prior conviction of a crime to make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job, and to consider certain topics when making that assessment. The bill would require that, if an employer makes a preliminary determination based on that individualized assessment to deny the applicant employment, the employer must notify the applicant of the reasons for that preliminary decision. The bill would authorize an applicant to respond to that notification within 10 days with information that challenges the accuracy of the information in the notification or that includes specified mitigation or rehabilitation evidence. The bill would require an employer to consider information submitted by the applicant before making a final decision. The bill would require an employer who has made a final decision to deny employment to the applicant to notify the applicant in writing of specified topics.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**SECTION 1.** The Legislature finds and declares all of the following:

(a) In 2013, the State of California passed historic legislation to reduce barriers to employment for people with conviction histories, and to decrease unemployment in communities with concentrated numbers of people with conviction histories, recognizing that these barriers are matters of statewide concern. The Ban the Box law passed in 2013 applied to state agencies, all cities and counties, including charter cities and charter counties, and special districts.

(b) In 2015, President Obama directed all federal agencies to "Ban the Box" and refrain from asking applicants about their convictions on the initial job application.

(c) Nationwide, 24 states and over 150 cities and counties have adopted a "Ban the Box" law, and over 300 companies have signed the White House Fair Chance hiring pledge.

(d) Nine states and 15 major cities, including Los Angeles and San Francisco, have adopted fair chance hiring laws that cover both public and private sector employers. Over 20 percent of the United States population now lives in a state or locality that prohibits private employers from inquiring into an applicant's record at the start of the hiring process.

(e) Since 2013, when Assembly Bill 218 was signed into law, five states have adopted fair chance hiring laws that cover private employers, Connecticut, Illinois, New Jersey, Oregon, and Vermont, as well as several major cities, including Baltimore, New York City, Philadelphia, and Austin, Texas.

(f) Roughly seven million Californians, or nearly one in three adults, have an arrest or conviction record that can significantly undermine their efforts to obtain gainful employment.

(g) Experts have found that employment is essential to helping formerly incarcerated people support themselves and their families, that a job develops prosocial behavior, strengthens community ties, enhances self-esteem, and improves mental health, all of which reduce recidivism. These effects are strengthened the longer the person holds the job, and especially when it pays more than minimum wage.

(h) Experts have found that people with criminal records have lower rates of turnover and higher rates of promotion on the job and that the personal contact with potential employees can reduce the negative stigma of a conviction by approximately 15 percent.

SEC. 2. Section 12952 is added to the Government Code, to read:

12952. (a) Except as provided in subdivision (b), it is an unlawful employment practice for an employer to do any of the following:

(1) To include on any application for employment any question that seeks the disclosure of an applicant's criminal history.

(2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the applicant has received a conditional offer.

(3) In conducting a conviction history background check in connection with any application for employment, to consider, distribute, or disseminate information on any of the following:

(A) Arrest not followed by conviction.

(B) Referral to or participation in a pretrial or posttrial diversion program.

(C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.

(D) Misdemeanor convictions for which no jail sentence can be imposed, or infractions.

(E) Misdemeanor convictions for which three years have passed since the date of conviction or felony convictions for which seven years have passed since the date of conviction.

(4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not apply to a position for which a state or local agency is otherwise required by law to conduct a conviction history background check, or to any position within a criminal justice agency, as that term is defined in Section 13101 of the Penal Code.

(c) This section shall not be construed to prevent a state or local agency from conducting a conviction history background check not in conflict with the provisions of subdivision (a).

(d) (1) (A) An employer that intends to deny an applicant a position of employment solely or in part because of the applicant's prior conviction of a crime must make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment described in this paragraph, the employer shall at least consider all of the following:

- (i) The nature and gravity of the offense or conduct.
- (ii) The time that has passed since the offense or conduct and completion of the sentence.
- (iii) The nature of the job held or sought.

(B) In making the individualized assessment described in this paragraph, the employer shall be consistent with the Equal Employment Opportunity Commission's Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (April 2012) and the regulations of the Department.

(2) If the employer makes a preliminary decision that the applicant's conviction history disqualifies him or her from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification shall contain all of the following:

- (A) Identify the conviction item that is the basis for the potential denial or disqualification.
- (B) Provide a copy of the conviction history report, if any.
- (C) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide.
- (D) Provide notice of the applicant's right to respond as described in this section, and time limit to respond.

(3) The applicant shall have at least 10 business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. That response may include information that challenges the accuracy of any information provided in the notice, or the submission of mitigation or rehabilitation evidence, or both. Evidence of mitigation or rehabilitation may be established by any of the following:

- (A) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime.
- (B) Evidence showing compliance with terms and conditions of probation or parole.
- (C) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to, letters of reference.

(4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision. Consistent with the standards set forth in subdivision (b), the employer shall not disqualify an applicant from the employment if the applicant showed evidence of mitigation or rehabilitation.

(5) If an employer makes a final decision to deny an application solely or in part because of the applicant's prior conviction of a crime, the employer shall notify the applicant in writing of all the following:

- (A) The final denial or disqualification.
- (B) Any existing procedure the employer has to challenge the decision or request reconsideration.
- (C) Whether the applicant may be eligible for other employment or occupation with the employer.
- (D) The earliest date the applicant may reapply for a position of employment.
- (E) The right to file a complaint with the department.

(e) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.