AB 1008 (McCarty) Fair Chance Act

FACT SHEET

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ISSUE

In 2013, California enacted historic “ban the box” legislation (AB 218) applicable to state agencies as well as all cities and counties. Recognizing that limited access to employment opportunities by people with conviction records is a matter of statewide concern, the legislature delayed inquiries into job applicant conviction histories until later in the hiring process in order to reduce barriers to public-sector employment for people with conviction histories and thus decrease unemployment in communities with concentrated numbers of people with conviction histories.

The “ban the box” movement has now been embraced by 25 states and over 150 localities throughout the nation. In addition, over 300 companies signed the White House Fair Chance Business Pledge last year. In 2015, President Obama also directed all federal agencies to refrain from asking applicants about their convictions on the initial job application.

Since 2013, when AB 218 was enacted, states and cities across the U.S. have expanded their fair-chance laws to cover both public- and private-sector employers. Today, nine states and 15 major cities, including Los Angeles and San Francisco, have adopted fair-chance hiring laws applicable to both sectors. Often these laws have generated strong bi-partisan support, as in the case of the New Jersey law that was signed by Republican Governor Chris Christie in 2014. As a result of state and local actions, over 20 percent of the United States population now lives in a state or locality where private employers are prohibited from inquiring into an applicant’s record at the start of the hiring process.

In addition to this mainstream movement for fair chance hiring, in 2012, the U.S. Equal Employment Opportunity Commission (EEOC) issued updated guidelines making clear that background checks have a significant “disparate impact” on people of color and clarifying the standards that employer screening practices should satisfy in order to comply with federal antidiscrimination law. The EEOC also expressly endorsed “ban the box” as a best practice for all employers to follow. Similarly, in California, the Fair Employment and Housing Council (FEHC) issued regulations modeled on the EEOC guidance in order to clarify the standards that apply to ensure that criminal background checks do not discriminate against people of color.

The need for these laws is great. Roughly eight million Californians—nearly one in three adults—have an arrest or conviction record. Increased access to employment for people with conviction histories is essential to helping formerly incarcerated people support themselves and their families, strengthening communities and boosting the economy, and reducing recidivism. The evidence is also clear that ban-the-box laws contribute to a marked increase in hiring of people with records. One multi-year study observed that an employed person with a conviction history had a 16% recidivism rate compared to a 52.3% recidivism rate by those lacking employment. The timing of an employer inquiry into conviction history is crucial: personal contact can reduce the negative stigma of a conviction and increase a person’s likelihood of being viewed as more than just his or her record and ultimately hired. Tailoring hiring
practices to reduce such stigma and offer workers with records a fair shot at employment is crucial for building healthy workplaces and communities.

**SOLUTION**

AB 1008 provides that 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 conviction history; to inquire into or consider the conviction history of an applicant until after the applicant has received a conditional offer; and, when conducting a conviction history background check, to consider, distribute, or disseminate specified information related to prior convictions, except where certain state laws require a background check, as in the case of law enforcement positions. Consistent with the 2012 EEOC guidance and the FEHC regulations, the bill also requires an employer who intends to deny an applicant a position 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.

**SUPPORT**

Co-sponsors: All of Us or None, National Employment Law Project, Legal Services for Prisoners with Children,