

**LOCAL LAW TO BE ENACTED BY
THE ERIE COUNTY LEGISLATURE
IN THE
COUNTY OF ERIE**

LOCAL LAW INTRO No. 8-1 -2016

LOCAL LAW No. _____ -2016

**A LOCAL LAW IN THE RELATION TO PROHIBITING THE ASKING OF QUESTIONS REGARDING OR
PERTAINING TO AN APPLICANT'S PRIOR CRIMINAL CONVICTIONS ON PRELIMINARY
EMPLOYMENT APPLICATIONS IN ERIE COUNTY**

Section 1: Legislative Intent

This Local Law shall be known as the Fair Employment Opportunity Act. Erie County, including Erie County vendors, and employers located within the Erie County limits shall not ask questions regarding or pertaining to an applicant's prior criminal conviction on preliminary employment applications. Consideration of the candidate's prior criminal convictions shall take place after the application is submitted and to begin during the first initial interview, or thereafter.

Section 2: Definitions

- (1) **"Applicant"** any person considered or who requests to be considered for employment by an employer.
- (2) **"County"** means Erie County, or any department, agency, or office thereof.
- (3) **"Conviction"** shall mean any sentence arising from a verdict or plea of guilty, including a sentence of incarceration, a suspended sentence, a sentence of probation, an unconditional, or diversion program.
- (4) **"Employment"** means an occupation, vocation, job, work for pay or employment, 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. "Employment" shall not, for the purpose of this law, include membership in any law enforcement agency.
- (5) **"Employer"** means any person, company, corporation, labor organization, not-for-profit, or association.

- (6) **“Interview”** means any direct contact by the employer with applicant whether in person or by telephone, to discuss the employment being sought or the applicants’ qualifications.
- (7) **“Vendor”** means any vendor, licensed contractor, or supplier of goods and/or services to Erie County, including vendor’s located outside the Erie County limits.

Section 3: Fair Employment Screening Standards

- (1) It shall be an unlawful discriminatory practice for a County agency or private employer to make any inquiry regarding or to require any person to disclose or reveal any criminal convictions during the application process. The application process shall begin when the applicant inquires about the employment being sought and shall end when an employer has accepted an employment application.
- (2) It shall further be an unlawful discriminatory practice for County agency or private employer to make any inquiry regarding, or to require any person to disclose or reveal any criminal convictions against such person before the first interview. If an employer does not conduct an interview, that employer must inform the applicant of a background check that will be completed before employment is to begin.
- (3) Agencies hiring for certain positions requiring licensure, including positions such as interns and apprentices for such licensed positions (e.g. prospective attorneys), may ask applicants the same questions asked by the licensing body, in accordance with New York State law.
- (4) Agencies hiring for positions where certain convictions or violations are a bar to employment in that position under the law, shall not be constrained from asking questions about those convictions or violations.
- (5) Agencies shall comply with Article 23-A of the New York State Correction Law when considering an applicant’s prior criminal convictions in determining the suitability for employment. In accordance with Article 23-A, nothing in this Local law shall be construed to limit an Agency’s authority to withdraw conditional offers of employment for any lawful reason, including the determination that the candidate has a conviction that bears a direct relationship to the duties and responsibilities of the position sought, or their hiring would pose an unreasonable risk to property or the safety of individuals or the general public.

Section 4: Exemptions

- (1) The prohibitions of the Local Law shall not apply if the inquires or adverse actions prohibited therein are specifically authorized by any other applicable law.
- (2) Any agency hiring for “police officer” and “peace officer” positions, as defined by NYS CPL Section 1.20 and NYS CPL Section 2.10, may ask about any criminal records of

applicants for such positions on pre-employment job applications and in initial interviews.

- (3) Any governmental agency, public or private service provider that provides a direct service specific to the care or supervision of children, young adults, and senior citizens may ask about any criminal records of applicants on the pre-employment job applications and in initial interviews.
- (4) Any employer who employs 20 employees or less may ask about any criminal records of applicants on pre-employment job applications and in initial interviews.

Section 5: Enforcement

- (1) The Director of Equal Employment Opportunity shall receive and investigate complaints under this Local Law.
- (2) A person aggravated by a violation of this Local Law may commence a civil action or proceeding for injunctive relief, damages, and other appropriate relief in law or equity against a person who violates this Local Law. In any such action or proceeding, the court, in its discretion, may allow for the party commencing such action or proceeding, if such party prevails, a reasonable attorney's fee as part of the costs.
- (3) Any person or organization, whether or not an aggrieved party may file with the Division of Equal Employment Opportunity a complaint alleging violation of the Local Law within 30 days from the date of the finding. Such complaint shall be in writing on the Division of Equal Employment Opportunity Harassment/Discrimination Complaint Form.
- (4) The Director of the Division of Equal Employment Opportunity shall notify the accused party within 30 days of the filing of the complaint and request the accused party to answer the complaint in writing within 20 days after the mailing of such notice. The date of the mailing of the Director's notification shall be endorsed thereon. The Division of Equal employment Opportunity director shall, thereafter, make a prompt investigation in connection with the complaint sufficient to determine whether there is probable cause to establish discriminatory conduct.
- (5) Within 120 days of the date of the filing of the complaint, the Division of Equal Employment Opportunity shall conclude the investigation and determine whether there is probable cause to support a finding of discriminatory conduct by the accused party under this Local Law and shall refer the matter to the Division of Equal Employment Opportunity Director, who shall issue his/her determination of the dismissal or further prosecution of the complaint within 60 days of receipt of the Division's report and recommendation.
- (6) A penalty of five hundred dollars may be imposed for the first violation of this Local Law by a party and a penalty of one thousand dollars may be imposed for each subsequent violation by that party of this Local Law.

Section 6: Severability

If any clause, sentence, paragraph, section, or article of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such determination shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or article thereof directly involved in the proceeding in which such adjudication shall have been rendered;

Section 7: Effective Date

This local law shall take effect (90) days from the date of passage.

Sponsors: Legislator Barbara Miller-Williams
 Legislator Betty Jean Grant