Legislation Details (With Text)

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Title: A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record or criminal conviction

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Indexes:

Attachments: 1. Int. No. 318 - 4/29/15, 2. Committee Report 12/3/14, 3. Hearing Testimony 12/3/14, 4. Hearing Transcript 12/3/14, 5. Committee Report 6/9/15, 6. Hearing Testimony 6/9/15, 7. Hearing Transcript 6/9/15, 8. June 10, 2015 - Stated Meeting Agenda with Links to Files, 9. Fiscal Impact Statement, 10. Mayor's Letter, 11. Hearing Transcript - Stated Meeting 6-10-15, 12. Minutes of the Stated Meeting - June 10, 2015, 13. Local Law 63

Date	Ver.	Action By	Action	Result
4/29/2014	*	City Council	Introduced by Council	
4/29/2014	*	City Council	Referred to Comm by Council	
12/3/2014	*	Committee on Civil Rights	Hearing Held by Committee	
12/3/2014	*	Committee on Civil Rights	Laid Over by Committee	
6/9/2015	*	Committee on Civil Rights	Hearing Held by Committee	
6/9/2015	*	Committee on Civil Rights	Amendment Proposed by Comm	
6/9/2015	*	Committee on Civil Rights	Amended by Committee	
6/9/2015	A	Committee on Civil Rights	Approved by Committee	Pass
6/10/2015	A	City Council	Approved by Council	Pass
6/10/2015	A	City Council	Sent to Mayor by Council	
6/29/2015	A	Mayor	Hearing Held by Mayor	
6/29/2015	A	Mayor	Signed Into Law by Mayor	
6/29/2015	A	City Council	Recved from Mayor by Council	

Int. No. 318-A

By Council Members Williams, Johnson, Torres, Miller, Gibson, Chin, Palma, the Public Advocate (Ms. James), Arroyo, Cornegy, Dromm, Koo, Levine, Reynoso, Richards, Espinal, Levin, Menchaca, Dickens,

Barron, Rosenthal, Cumbo, Rose, Rodriguez, King, Koslowitz, Wills, Mendez, Kallos, Lander, Eugene, Cabrera, Constantinides, Ferreras-Copeland and Maisel (by the request of the Manhattan Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's arrest record or criminal conviction

Be it enacted by the Council as follows:

Section 1. Subdivision 5 of section 8-102 of tile 8 of the administrative code of the city of New York is amended to read as follows:

5. For purposes of subdivisions one, two, three, eleven-a, twenty-two, subparagraph one of paragraph a of subdivision twenty-one, and paragraph e of subdivision twenty-one of section 8-107 of this chapter, the term "employer" does not include any employer with fewer than four persons in his or her employ. For purposes of this subdivision, natural persons employed as independent contractors to carry out work in furtherance of an employer's business enterprise who are not themselves employers shall be counted as persons in the employ of such employer.

§ 2. Subdivisions 9, 10 and 11 of section 8-107 of the administrative code of the city of New York, as amended by local law 37 for the year 2015, are amended and new subdivisions 11-a and 11-b are added to read as follows:

9. Licenses, registrations and [Permits] permits. (a) It shall be an unlawful discriminatory practice:

[(a)] (1) Except as otherwise provided in paragraph (c) of this subdivision, for an agency authorized to issue a license, registration or permit or an employee thereof to discriminate against an applicant for a license, registration or permit because of the actual or perceived race, creed, color, national origin, age, gender, marital status, partnership status, disability, sexual orientation or alienage or citizenship status of such applicant.

[(b)] (2) Except as otherwise provided in paragraph (c) of this subdivision, for an agency authorized to issue a license, registration or permit or an employee thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for a license, registration or permit or to make any inquiry in connection with any such application, which

expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, age, gender, marital status, partnership status, disability, sexual orientation or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

[(c)Nothing contained in this subdivision shall be construed to bar an agency authorized to issue a license or permit from using age or disability as a criterion for determining eligibility for a license or permit when specifically required to do so by any other provision of law.] (3) For any person to deny any license, registration or permit to any applicant, or act adversely upon any holder of a license, registration or permit by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based on his or her having been convicted of one or more criminal offenses, when such denial or adverse action is in violation of the provisions of article twenty-three-a of the correction law.

(4) For any person to deny any license, registration or permit to any applicant, or act adversely upon any holder of a license, registration or permit by reason of his or her having been arrested or accused of committing a crime when such denial or adverse action is in violation of subdivision 16 of section 296 of article 15 of the New York state executive law.

(5) For any person to make any inquiry, in writing or otherwise, regarding any arrest or criminal accusation of an applicant for any license, registration or permit when such inquiry is in violation of subdivision 16 of section 296 of article 15 of the New York state executive law.

(b) (1) Except as otherwise provided in this paragraph, it shall be an unlawful discriminatory practice for an agency to request or use for licensing, registration or permitting purposes information contained in the consumer credit history of an applicant, licensee, registrant or permittee for licensing or permitting purposes.

(2) Subparagraph (1) of this paragraph shall not apply to an agency required by state or federal law or regulations to use an individual's consumer credit history for licensing, registration or permitting purposes.

(3) Subparagraph (1) of this paragraph shall not be construed to affect the ability of an agency to

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consider an applicant's, licensee's, registrant's or permittee's failure to pay any tax, fine, penalty, or fee for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction, or any tax for which a government agency has issued a warrant, or a lien or levy on property.

(4) Nothing in this paragraph shall preclude a licensing agency from requesting, receiving, or using consumer credit history information obtained pursuant to a lawful subpoena, court order or law enforcement investigation.

(c) The prohibition of this subdivision relating to inquiries, denials or other adverse action related to a person's record of arrests or convictions shall not apply to licensing activities in relation to the regulation of explosives, pistols, handguns, rifles, shotguns, or other firearms and deadly weapons. Nothing contained in this subdivision shall be construed to bar an agency authorized to issue a license, registration or permit from using age, [or] disability, criminal conviction or arrest record as a criterion for determining eligibility or continuing fitness for a license, registration or permit when specifically required to do so by any other provision of law.

10. Criminal conviction; employment. (a) It shall be an unlawful discriminatory practice for any [person] employer, employment agency or agent thereof to deny [any license or permit or] employment to any person or take adverse action against any employee by reason of [his or her] such person or employee having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based on [his or her] such person or employee having been convicted of one or more criminal offenses, when such denial or adverse action is in violation of the provisions of article twenty-three-a of the correction law.

(b) For purposes of this subdivision, "employment" shall not include membership in any law enforcement agency.

(c) Pursuant to section seven hundred fifty-five of the correction law, the provisions of this subdivision

shall be enforceable against public agencies by a proceeding brought pursuant to article seventy-eight of the Civil Practice Law and Rules, and the provisions of this subdivision shall be enforceable against private employers by the commission through the administrative procedure provided for in this chapter or as provided in chapter five of this title. For purposes of this paragraph only, the terms "public agency" and "private employer" shall have the meaning given such terms in section seven hundred fifty of the correction law.

11. Arrest record; employment. It shall be an unlawful discriminatory practice, unless specifically required or permitted by any other law, for any person to:

(a) deny employment to any applicant or act adversely upon any employee by reason of an arrest or criminal accusation of such applicant or employee when such denial or adverse action is in violation of subdivision 16 of section 296 of article 15 of the New York state executive law; or

(b) make any inquiry [about, whether in any form of application or otherwise, or to act upon adversely to the person involved, any arrest or criminal accusation of such person not then pending against that person which was followed by a termination of that criminal action or proceeding in favor of such person, as defined in subdivision two of section 160.50 of the criminal procedure law, in connection with the licensing, employment or providing of credit to such person; provided, however, that the prohibition of such inquiries or adverse action shall not apply to licensing activities in relation to the regulation of guns firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the Criminal Procedure Law] in writing or otherwise, regarding any arrest or criminal accusation of an applicant or employee when such inquiry is in violation of subdivision 16 of section 296 of article 15 of the New York state executive law.

11-a. Arrest and conviction records; employer inquiries. (a) In addition to the restrictions in subdivision 11 of this section, it shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to:

(1) Declare, print or circulate or cause to be declared, printed or circulated any solicitation,

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advertisement or publication, which expresses, directly or indirectly, any limitation, or specification in employment based on a person's arrest or criminal conviction; or

(2) Make any inquiry or statement related to the pending arrest or criminal conviction record of any person who is in the process of applying for employment with such employer or agent thereof until after such employer or agent thereof has extended a conditional offer of employment to the applicant. For purposes of this subdivision, with respect to an applicant for temporary employment at a temporary help firm as such term is defined by subdivision five of section 916 of article 31 of the New York labor law, an offer to be placed in the temporary help firm's general candidate pool shall constitute a conditional offer of employment. For purposes of this subdivision, "any inquiry" means any question communicated to an applicant in writing or otherwise, or any searches of publicly available records or consumer reports that are conducted for the purpose of obtaining an applicant's criminal background information. For purposes of this subdivision, "any statement" means a statement communicated in writing or otherwise to the applicant for purposes of obtaining an applicant's criminal background information regarding: (i) an arrest record; (ii) a conviction record; or (iii) a criminal background check.

(b) After extending an applicant a conditional offer of employment, an employer, employment agency or agent thereof may inquire about the applicant's arrest or conviction record if before taking any adverse employment action based on such inquiry, the employer, employment agency or agent thereof:

(i) provides a written copy of the inquiry to the applicant in a manner to be determined by the commission;

(ii) performs an analysis of the applicant under article twenty-three-a of the correction law and provides a written copy of such analysis to the applicant in a manner to be determined by the commission, which shall include but not be limited to supporting documents that formed the basis for an adverse action based on such analysis and the employer's or employment agency's reasons for taking any adverse action against such applicant; and

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(iii) after giving the applicant the inquiry and analysis in writing pursuant to subparagraphs (i) and (ii) of this paragraph, allows the applicant a reasonable time to respond, which shall be no less than three business days and during this time, holds the position open for the applicant.

(c) Nothing in this subdivision shall prevent an employer, employment agency or agent thereof from taking adverse action against any employee or denying employment to any applicant for reasons other than such employee or applicant's arrest or criminal conviction record.

(d) An applicant shall not be required to respond to any inquiry or statement that violates paragraph (a) of this subdivision and any refusal to respond to such inquiry or statement shall not disqualify an applicant from the prospective employment.

(e) This subdivision shall not apply to any actions taken by an employer or agent thereof pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history. For purposes of this paragraph federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in section 3(a)(26) of the securities exchange act of 1934, as amended.

(f) This subdivision shall not apply to any actions taken by an employer or agent thereof with regard to an applicant for employment:

(1) as a police officer or peace officer, as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, respectively, or at a law enforcement agency as that term is used in article 23-a of the correction law, including but not limited to the police department, the fire department, the department of correction, the department of investigation, the department of probation, the division of youth and family services, the business integrity commission, and the district attorneys' offices; or

(2) listed in the determinations of personnel published as a commissioner's calendar item and listed on the website of the department of citywide administrative services upon a determination by the commissioner of citywide administrative services that the position involves law enforcement, is susceptible to bribery or other

corruption, or entails the provision of services to or safeguarding of persons who, because of age, disability, infirmity or other condition, are vulnerable to abuse. If the department takes adverse action against any applicant based on the applicant's arrest or criminal conviction record, it shall provide a written copy of such analysis performed under article twenty-three a of the correction law to the applicant in a form and manner to be determined by the department.

(g) The provisions of this subdivision shall be enforceable against public agencies by a proceeding brought pursuant to article seventy-eight of the Civil Practice Law and Rules, and the provisions of this subdivision shall be enforceable against private employers by the commission through the administrative procedure provided for in this chapter or as provided in chapter five of this title. For purposes of this paragraph only, the terms "public agency" and "private employer" shall have the meaning given such terms in section seven hundred fifty of the correction law.

11-b. Arrest record; credit application. For purposes of issuing credit, it shall be an unlawful discriminatory practice, unless specifically required or permitted by any other law, to:

(a) deny or act adversely upon any person seeking credit by reason of an arrest or criminal accusation of such person when such denial or adverse action is in violation of subdivision 16 of section 296 of article 15 of the New York state executive law; or

(b) make any inquiry in writing or otherwise, regarding any arrest or criminal accusation of a person seeking credit when such inquiry is in violation of subdivision 16 of section 296 of article 15 of the New York state executive law.

§ 3. The commission on human rights shall engage in outreach and education efforts regarding the rights of current and prospective employees, and the responsibilities of employers, established by this local law. Such outreach and education shall be directed at public and private employers, and the general public.

§ 4. This local law shall take effect 120 days after its enactment, provided, however, that the commissioner shall take any actions necessary prior to such effective date for the implementation of this local

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law including, but not limited to, the adoption of any necessary rules.

JEB/RC
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