

RESOLUTION NO. 221 -2020, ADOPTING LOCAL LAW NO. 14 -2020, A LOCAL LAW TO AMEND CHAPTER 528 OF THE SUFFOLK COUNTY CODE TO ENSURE FAIR EMPLOYMENT SCREENING IN SUFFOLK COUNTY

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on January 2, 2020, a proposed local law entitled, "**A LOCAL LAW TO AMEND CHAPTER 528 OF THE SUFFOLK COUNTY CODE TO ENSURE FAIR EMPLOYMENT SCREENING IN SUFFOLK COUNTY**"; now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

LOCAL LAW NO. 14 -2020, SUFFOLK COUNTY, NEW YORK

A LOCAL LAW TO AMEND CHAPTER 528 OF THE SUFFOLK COUNTY CODE TO ENSURE FAIR EMPLOYMENT SCREENING IN SUFFOLK COUNTY

BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF SUFFOLK, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the County of Suffolk is committed to protecting the rights of all its residents and assisting in the rehabilitation of people with criminal records.

This Legislature also finds and determines that the County's human rights law prohibits employment discrimination based on an individual's prior involvement in criminal proceedings. Current law protects employers from actions in negligent hiring if they follow the safeguards in place under current law.

This Legislature also finds that removing the conviction history "check box" from applications is a proven method of increasing employment opportunities for individuals with criminal convictions; instead of having their application discarded on the basis of one answer, applicants are able to obtain interviews regardless of their conviction status. This also aids in reducing the stigma and bias associated with individuals with a criminal background, and works towards ending structural discrimination.

This Legislature also determines that Suffolk County should join the growing number of governments that prohibit conviction history check boxes on employment applications to increase employment opportunities for all County residents.

Therefore, the purpose of this law is to amend Chapter 528 of the Suffolk County Code to prohibit inquiry into criminal arrests (already prohibited) or convictions on employment applications.

Section 2. Amendments.

Chapter 528 of the SUFFOLK COUNTY CODE is hereby amended as follows:

Chapter 528. Human Rights

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Article III. Fair Employment Screening

§528-19. Definitions.

For the purposes of this article, the following terms shall have the following meanings:

APPLICANT – any person considered or who requests to be considered for employment by an employer.

CONVICTION – any sentence imposed by a court of competent jurisdiction arising from a verdict or plea of guilty, including a sentence of incarceration, a suspended sentence, a sentence of probation, an unconditional discharge, or diversion program.

COUNTY – the County of Suffolk, its departments, administrative units, and related agencies.

EMPLOYMENT – an occupation, vocation, job, work for pay, 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 purposes of this article, include employment by any governmental law enforcement agency.

EMPLOYER – the County or any person, partnership, corporation, labor organization, not-for-profit, or association having fifteen or more employees.

INTERVIEW – any direct contact by the employer with the applicant, whether in person or by telephone, to discuss the employment being sought or the applicant's qualifications.

§528-20. Fair Employment Screening.

Suffolk County and any employer located within the County shall not ask questions regarding or pertaining to an applicant's prior criminal conviction on any preliminary employment application. Consideration of the candidate's prior criminal convictions shall take place only after an application is submitted, after an initial interview or thereafter.

§528-21. Fair Employment Screening Standards.

- A. It shall be an unlawful discriminatory practice for an employer to make any inquiry regarding or to require any person to disclose or reveal any criminal conviction during the application process. The application process shall begin when the applicant inquires about the employment sought and shall end when an employer has accepted an employment application.

- B. It shall be an unlawful discriminatory practice for an employer to make any inquiry regarding or to require any person to disclose or reveal any criminal conviction against such person before a first interview. If an employer does not conduct an interview, that employer must inform the applicant whether a criminal background check will be conducted before employment is to begin.
- C. An employer hiring for licensed trades or professions, including positions such as interns and apprentices for such licensed positions, may ask applicants the same questions asked by the trade or professional licensing body, in accordance with New York State law.
- D. An employer hiring for positions where certain convictions or violations are a bar to employment in that position under New York State or Federal law shall not be constrained from asking questions about those convictions or violations.
- E. An employer shall comply with Article 23-A of the New York State Corrections Law when considering an applicant's prior criminal convictions in determining suitability for employment. In accordance with Article 23-A, nothing in this law shall be construed to limit an employer'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 that hiring would pose an unreasonable risk to property or to the safety of individuals or the general public.

§528-22. Exceptions.

- A. The prohibitions of this article shall not apply if the inquiries or adverse action prohibited herein are specifically authorized by any other applicable law.
- B. The prohibitions of this article shall not apply to the Suffolk County Police Department or the Suffolk County Department of Fire, Rescue, and Emergency Services, or to any other employer hiring for "police officer" and "peace officer" positions, as defined by Criminal Procedure Law §1.20 and §2.10.
- C. The prohibitions in this article shall not apply to any public or private school, nor to any public or private service provider of direct services specific to the care or supervision of children, young adults, senior citizens, or the physically or mentally disabled.

§528-23. Enforcement.

- A. Any person aggrieved by a violation of this article may commence a civil action or proceeding for injunctive relief, damages, and other appropriate relief in law or in equity against a person who violates this article. 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.
- B. Any person or organization, whether or not an aggrieved party, may file with the Human Right Commission a complaint alleging violation of this article. Such complaint shall be in writing on a form prescribed by the Director of the Human Right Commission.

- C. Upon certification by the Director of the Human Rights Commission that there has been an affirmative finding of probable cause of discriminatory practice, the Director may request the Commission to commence an action against the accused party, in a court of competent jurisdiction, seeking the imposition of civil penalties and damages in conformance with Section 528-14 of this Chapter.

Section 3. Applicability.

This law shall apply to all actions occurring on or after the effective date of this law.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(26) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as routine or continuing administration and management not including new programs or major reordering of priorities that may affect the environment. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 6. Effective Date.

This law shall take effect 120 days after its filing in the Office of the Secretary of State.

___ Underlining denotes addition of new language

DATED: March 17, 2020

APPROVED BY:

/s/ Dennis M. Cohen
Chief Deputy County Executive of Suffolk County
Date: April 16, 2020
After a public hearing duly held on April 16, 2020
Filed with the Secretary of State on April 27, 2020