

COMMUNITY HIRING MODEL LANGUAGE: WHY DO WE NEED IT AND HOW DOES IT WORK?

INTRODUCTION

Each year hundreds of thousands of people are released from incarceration and return to neighborhoods suffering from underemployment and lack of opportunity. In order to put our communities back to work, we need policies that prioritize lifting local residents out of poverty by giving them access to good jobs.

- Community hiring requirements create incentives for employers to hire from the community, and good first source referral systems create the pipeline of qualified workers from low-income areas prepared to meet that demand.
- Ban the box policies remove questions of criminal history from the initial job application, ensuring applicants are considered on their qualifications first.
- Job quality standards such as living wage, paid sick days, and other measures help make sure that the jobs made available are good jobs.

These policies work together to enhance the applicant pool available to employers, assist employers and policymakers in complying with federal antidiscrimination laws and in redressing economic inequality, and strengthen our communities. This resource will provide information on integrating the policies.

Key Components of a Combined Community Hiring and Ban the Box Approach

Reducing stigma. Some of the ways that people with arrest and conviction records are described reinforces stereotypes. There has been growing consensus that leading with the term “people” is humanizing, such as “people with arrests or convictions” or “people with criminal histories.”

What do these measures do? At a minimum, the ban the box component includes removing questions about criminal records from the job application. More effective ban the box policies include the components detailed below. Targeted hiring measures create obligations on employers to include particular categories of workers such as local and disadvantaged workers as a part of their workforce.

Who is covered? The combined measures can be written into law, policy or contracts to cover local government hiring, include contractors with the local government, or even expand to all public and private employers within the area.

EXPLAINING THE MODEL LANGUAGE: KEY COMPONENTS

Ban the Box Measures and Practices

- **A background check may be unnecessary for a job position** because most jobs do not involve unsupervised access to sensitive populations or handling sensitive information.
- **If a background check is necessary, only consider those convictions with a direct relationship to job responsibilities.** Avoid consideration of old records.
- **Do not consider arrests or dismissed convictions.** Some jurisdictions prohibit the consideration of “arrests not leading to convictions” or “dismissed convictions” in an employment decision.
- **Delay inquiry of criminal history.** Requiring that any question regarding criminal histories is removed from a job application is clear and easily enforceable. All inquiries, oral or written, should be delayed.
- **Conviction history inquiry after a conditional offer.** The most effective policies delay conviction history inquiries until after a conditional offer. A conditional offer signals that the individual is the most qualified person for the job and the final step in the hiring process is the criminal background check.
- **Centralize reviewing conviction history information,** both to limit the number of people with access to confidential information and with fewer reviewers, a higher degree of staff training can be assured.
- **List any legal barriers** that exist for people with past convictions in job announcements. In addition, if a background check is required, inform applicants on the job announcement.
- **Remove self-reporting questions about convictions.** Differences between self-disclosed information and background checks are often caused by misunderstandings and are inaccurate “truth tests.”
- **If a job applicant is rejected because of a past conviction,** provide the applicant with written notice of the specific conviction that is considered job-related and how it is related to the job responsibilities.
- **Provide the applicant with a copy of the results of any background check.** Background check reports are often inaccurate, so give applicants the chance to challenge the reported information. Under federal consumer protection law (*Fair Credit Reporting Act (FCRA)*), the subject of a commercially-prepared background check report must be provided a copy of the report prior to an adverse action.
- **Provide the applicant the right and sufficient time to submit evidence of rehabilitation** when a record is considered in hiring. Evidence may include letters of recommendations from community members and certificates from programs or education. Hold the position open until the review is complete.
- **Include effective enforcement.** Ensure there is an oversight mechanism for the policy, such as an agency that has the infrastructure to process complaints and to audit policies.

Targeted Hiring Measures

- **Clearly defined beneficiaries.** It is essential that the categories of individuals who will benefit from targeted hiring be clearly and specifically defined.
- **Accommodate legal restrictions.** Some laws and government grant restrictions limit the ability of government entities and government grantees to use or require preferences among job seekers. For this reason, our model language limits the use of geographic preferences and does not employ preferences based on race or gender except as permitted by federal law (such as the hiring goals in the Executive Order 11246 regulations for federally funded construction projects).
- **Target both low-income zip codes and individual characteristics.** Effective targeted hiring measures recognize that economic disadvantage occurs both because of an individual's own challenges (poverty, lack of a GED or diploma, having been convicted or arrested) and because of where they live. Our model language targets both residents of low-income zip codes and people with individual barriers to employment.
- **Hard percentage requirements expressed in terms of work hours.** In order to ensure that covered employers take targeted hiring seriously, it is best to set out clear, firm and realistic hiring requirements (as opposed to aspirational goals). Setting a straightforward percentage of the workforce that needs to consist of targeted beneficiaries is a common and effective way to do that. It's also best to express the requirement in terms of work hours performed (rather than jobs performed) to guard against the use of very-short-term hires as a way to meet the requirements.
- **Create high quality construction apprenticeship opportunities.** For targeted hiring programs focused on construction jobs, access to high quality apprenticeship is an essential element. First, it's important to require that at least 20% of the positions on the project will be performed by apprentices to ensure that opportunities will exist at the apprenticeship level. Second, it's important to ensure that the apprentices hired are participating in a high quality training program, and at a minimum that means requiring participation in a program that is registered with the state or federal government. Finally, it's useful to set a separate targeted hiring percentage for apprenticeship level positions. This is usually higher than the percentage for the overall workforce, out of recognition that many of the targeted beneficiaries will be coming in at the apprenticeship level.
- **Frequent reporting of results.** In order to effectively determine whether a targeted hiring program is working and whether adjustments need to be made, those monitoring the program need regularly-reported, accurate data during the course of the project. Our model language requires employers to report quarterly and to provide data as requested to the proper oversight body.
- **Protect the employer's hiring discretion.** Targeted hiring policies are intended to benefit groups of disadvantaged individuals, not to ensure that any particular individual gets hired. It's important that employers retain the authority to make (and the responsibility of making) individual hiring decisions.

COMMUNITY HIRING MODEL LANGUAGE

I. Definitions.

The following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“Applicant” means an individual considered for, or who requests to be considered for, a Covered Job.

“Background Check Requirement” means a valid law or regulation of a governmental or quasi-governmental body.

“Covered Job” means [DESCRIPTION OF UNIVERSE OF JOBS COVERED, e.g. “any job for which at least fifty percent of the work hours during any calendar year are performed on the Project Site”]

“Disadvantaged Worker” means an individual who, prior to commencing work in a Covered Job, is domiciled in an Economically Disadvantaged Area and faces at least two of the following barriers to employment: (1) being homeless; (2) being a custodial single parent; (3) receiving public assistance; (4) having a prior arrest or conviction; (5) suffering from Chronic Unemployment (as defined in the Construction Careers Policy); (6) having been emancipated from the foster care system; or (7) being a veteran of the U.S. military.

“Economically Disadvantaged Area” means a zip code that includes a census tract or portion thereof in which the median annual household income is less than \$40,000 per year, as measured and reported by the U.S. Census Bureau in the 2010 U.S. Census and as updated upon the U.S. Census Bureau issuing updated Median Annual Household Income data by census tract in the American Community Survey.

“Employment Hiring Plan” means a plan presented by an Employer to [GOVERNMENT ENTITY] describing in detail the ways in which Employer will meet its obligations hereunder.

“Employer” means any entity employing at least two full time equivalent individuals to perform Covered Jobs.

“Local Disadvantaged Resident” means an individual whose primary place of residence is within an Economically Disadvantaged Area in [LOCAL GEOGRAPHIC AREA, E.G. CITY OR COUNTY].

“Restricted Federal Funding” means funding from a federal agency the receipt of which prohibits the recipient from engaging in geographic discrimination.

II. Hiring of Targeted Workers

- A. [For projects not receiving Restricted Federal Funding] Each Employer shall ensure that at least thirty percent of all work hours performed by workers in Covered Jobs are performed by Local Disadvantaged Residents. In determining compliance with this subsection, hours worked by

residents of states other than [STATE] shall be excluded from the calculation. [OR, for projects receiving Restricted Federal Funding] Each Employer shall ensure that at least thirty percent of all work hours performed by workers in Covered Jobs are performed by residents or Economically Disadvantaged Areas.

- B. Each Employer shall ensure that at least twenty percent of all work hours performed by workers in Covered Jobs are performed by Disadvantaged Workers.
- C. [For all construction projects] Each Employer shall employ the maximum number of apprentices allowed by law, shall only employ apprentices enrolled in apprenticeship programs registered with the State or Federal government, and shall ensure that fifty percent of all work hours performed by apprentices are performed by Disadvantaged Workers.
- D. [For federally-funded construction projects] Each Employer shall comply with U.S. Executive Order 11246 and all implementing regulations, including satisfaction of hiring goals for minorities and women set forth at 41 CFR sec. 60-4.

III. Fair Hiring Process

- A. The Employer shall not conduct criminal background checks nor inquire into an Applicant's conviction history, unless required to do so by a Background Check Requirement. The Employer shall not conduct credit history checks nor inquire into an Applicant's credit history, unless required to do so by a Background Check Requirement.
- B. Where a criminal background check is required by a Background Check Requirement, the Employer shall not inquire into an Applicant's conviction history until after a conditional offer. Job applications shall not inquire into an Applicant's conviction history.
- C. Prior to a criminal background check, the Employer shall send the Applicant: (a) notification of the conditional offer, (b) request for authorization of the background check, (c) notification that prior to an adverse action, the Applicant will have the opportunity to demonstrate inaccuracy or provide evidence of mitigating circumstances or rehabilitation, and (d) notification about the type of evidence that may be submitted per subsection (c).
- D. In considering an Applicant's criminal background check, an Employer may examine only convictions related to job duties and responsibilities of the Covered Job and shall consider the time that has passed since those convictions.
- E. If an Applicant's criminal background check contains information that may be the basis for an adverse action, the Employer shall: (a) notify the Applicant of the potential adverse action, (b) identify the conviction item(s) that would be the basis for the adverse action, and (c) provide a copy of the report.

- F. The Applicant shall have ten (10) business days, after receipt of the notice of the conviction item(s) that would be the basis for the adverse action, to respond to the Employer with any information rebutting the basis for the adverse action. The Employer shall make the final employment decision based on an individualized assessment of the information submitted and the factors recommended by the U.S. Equal Employment Opportunity Commission.
- G. If the Employer makes an adverse decision, the Applicant shall be informed of the final decision and that he or she may be eligible for other positions.
- H. Where a criminal background check is required by a Background Check Requirement, the Employer shall include the following statement in the job announcement: "This position is subject to a background check for any convictions related to its duties and responsibilities and will be conducted only after a conditional offer. A conviction history will not automatically disqualify an applicant. If an applicant's conviction history contains information that may be the basis for an adverse action, the applicant will be notified and provided a copy of the report. After notification, the applicant will have ten business days to provide information about any inaccuracy in the report or any evidence of mitigating circumstances or rehabilitation."

IV. Miscellaneous

- A. **Nondiscrimination.** Employers shall not discriminate against Local Residents or Disadvantaged Workers on the basis of their Local Resident status, status as a Disadvantaged Worker, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.
- B. **Retaliation Prohibited.** An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint to the [GOVERNMENT ENTITY] or participating in any proceedings related to enforcement of this [LAW/POLICY] against the Employer.
- C. **Compliance Records.** Each Employer shall make available to the [GOVERNMENT ENTITY] on a quarterly basis and upon request, records sufficient to determine compliance with its obligations hereunder. An Employer may redact names and social security numbers from requested records in order to protect the privacy of individual employees.
- D. **Hiring Discretion.** Nothing in this [LAW/POLICY/AGREEMENT] shall require that any Employer hire any particular individual.