

FOR THE RECORD

Testimony of The Legal Aid Society In Support Of City Council Proposed Int. No. 318-A

June 9, 2015

Good afternoon. I am Karen Cacace, the Supervising Attorney of the Employment Law Unit in the Civil Practice of The Legal Aid Society. The Employment Law Unit represents low-wage workers with employment claims against their current, former or prospective employers. I appreciate the opportunity to come before you today in support of City Council Proposed Int. No. 318-A, the Fair Chance Act, which builds upon existing state and city laws meant to prevent unfair job discrimination against the hundreds of thousands of New Yorkers who encounter the criminal justice system each and every year.

The Legal Aid Society is the oldest and largest legal services provider for low-income families and individuals in the United States. Annually, the Society handles more than 300,000 cases and legal matters for low income New Yorkers with civil, criminal and juvenile rights problems, including some 46,000 individual civil matters in the past year benefiting nearly 115,000 New Yorkers as well as law reform cases which benefit all two million low-income families and individuals in New York City.

Through a network of 16 neighborhood and courthouse-based offices in all five boroughs and 24 city-wide and special projects, the Society's Civil Practice provides direct legal assistance to low-income individuals. In addition to individual assistance, The Legal Aid Society represents clients in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back up support and technical assistance for community organizations.

Through our Employment Law Unit, we provide legal services to over 2,000 low-wage workers each year to ensure these workers receive fair wages, fair treatment, decent working conditions, and the benefits to which they are entitled if they lose their jobs. Most of these cases involve wage and hour violations, family and medical leave issues, unemployment insurance, and workplace discrimination, including discrimination based on past involvement with the criminal justice system.

The Society's Criminal Practice serves as the primary defender of poor people prosecuted in the State court system, under our contract with New York City. Our hundreds of lawyers are on the front lines in arraignment parts every day and handled more than 230,000 cases in the last year. Well over half of our clients are charged with misdemeanors or petty offenses, and a large share of these clients are young persons of color, whose neighborhoods bear the brunt of especially intensive law enforcement by the Police Department. Time and again, we see these clients lose their jobs and lose opportunities for career advancement merely by reason of having been arrested, punishments more severe than the actual sentences imposed by judges. Time and again, applicants for entry-level positions are thrown on the discard pile simply because they have arrest or conviction records, without even a chance to be interviewed and prove that they deserve an opportunity. This is why the Fair Chance Act is so important, and so necessary, if we

wish to be a City where everyone who's willing to work has a chance to climb the ladder of success.

Proposed Int. No. 318-A contains several significant provisions that expand existing law prohibiting employment discrimination based on criminal history.

PROPOSED INT. NO. 318-A

"Ban the Box" has been adopted in a number of other states and cities. Former Mayor Bloomberg promulgated a similar order governing municipal employment.¹ Proposed Int. No. 318-A would expand "Ban the Box" to private employment. Specifically, the bill provides that an employer may neither ask an applicant about his criminal history, nor conduct a criminal history search --- either by a search of public records or through a commercial credit-reporting agency --- until the employer has deemed the applicant qualified and has extended a "conditional offer of employment," *i.e.*, an offer conditioned on the results of the background check. If the background check causes the employer to withdraw the offer, the employer must provide the applicant with a copy of the results of the inquiry as well as a copy of the employer's analysis pursuant to Article 23-A of the Correction Law, which requires an employer to weigh various factors including but not limited to the nature of the job, the nature of the conviction, the recency or remoteness of the conviction, and the applicant's evidence of rehabilitation, before using the criminal record as a basis to deny employment. At that point, the applicant must be given an opportunity to respond, and the employer must hold the position open for at least 3 days, pending the applicant's response.

CURRENT PROBLEM

These new rules are necessary because the existing prohibitions against job discrimination by reason of criminal history have proven difficult to enforce. If an employer is permitted to ask for an applicant's criminal record at the outset of the application process, the employer may, and usually will, reject the applicant with a criminal record without giving a meaningful reason, despite the applicant's qualifications. It is often difficult to prove that the criminal history was the reason for rejection. Likewise, it is difficult to determine whether the employer made a good faith effort to evaluate the factors that state law requires it to evaluate under Article 23-A of the Correction Law.

"Ban the Box" is necessary to assure that employers truly obey the legal mandate to offer equal opportunity to persons with criminal records, unless there is a genuine relationship between the job duties in question, or, it would unreasonably endanger the public interest to hire the applicant. When it is established under the provisions of Proposed Int. No. 318-A that the applicant would have been hired but for his record, and the employer has explained why the record is deemed a disqualifier, then the Commission on Human Rights, and a reviewing court, will be able to assess whether the employer's hiring practices are lawful.

¹ Executive Order No. 151, Mayor Michael R. Bloomberg, Consideration of Criminal Convictions in Hiring dated August 4, 2011

THE PROPOSAL WILL HAVE A GREAT IMPACT

The provision requiring an employer to hold a job open until the applicant has a chance to explain why his criminal record should not disqualify him is a critical part of the bill. Legal Aid's employment lawyers have succeeded in representing clients by arguing that an applicant was qualified in spite of an arrest or conviction history, only to be told that the job was gone because someone else has been hired or a civil service list expired, thereby further delaying the client's reentry to the workforce. Three days is a modest and reasonable length of time to afford the applicant a chance to explain the circumstances of his criminal record to the employer, or explain that the background check report is erroneous, or that the applicant has overcome addiction or illness that led to his criminal justice involvement.

Another valuable provision of Intro. 318-A is that it will not only protect applicants for employment who have arrest histories, it will extend protection to persons who are arrested while currently employed. The bill would not prohibit firings or other discipline if an employee is convicted of a crime, but it would require employers to use the same careful, multi-factor analysis that the law already requires with respect to new applicants who have a criminal record. Of course, an employer may sensibly consider a new conviction to reflect more negatively on the employee than an old, pre-employment offense, but there is no reason why current employees should have no protection at all. Unionized and civil service employees already have contractual or legal protection against arbitrary firings, whether based on convictions or otherwise. Lower-paid, struggling workers deserve such protections as well. Legal Aid has seen too many workers lose their jobs automatically, forcing them to start over in a difficult job market, because of relatively minor offenses that had nothing to do with the job and don't fairly reflect on the worker's ability to continue working competently and honestly. This is extremely disruptive to our clients' lives and the loss of a job often leads to the loss of basic needs such as housing.

CONCLUSION

In conclusion, we thank and applaud the sponsors of this important legislation, and urge its passage by the Council. All New Yorkers deserve a fair chance to support themselves and their families. This bill will help them to get it. Legal Aid is looking forward to enforcing the new provisions and to continuing to work with the City Council on other re-entry initiatives.

Respectfully Submitted:

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