

Municipal & County Budgets: Certifying Compliance with Federal Civil Rights Requirements

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Inbox

To: bsterling@penningtonboro.org <bsterling@penningtonboro.org>;

Dear Municipal Clerk:

P.L. 2017, c. 183, recently signed into law by Governor Christie, amends the Local Budget Law to require municipal and county governing bodies to certify compliance with certain Federal civil rights requirements before approved budgets can be submitted to the Division. Specifically, the governing body must certify that their municipal or county hiring practices comply with United States Equal Employment Opportunity Commission (EEOC) official guidance on the use of arrest and conviction records when making employment decisions. The law is effective commencing with 2018 municipal and county budgets.

Please review Local Finance Notice 2017-27, located at <http://www.nj.gov/dca/divisions/dlgs/lfns/17/2017-27.pdf>, for further details. A model group affidavit and resolution can be found at http://www.nj.gov/dca/divisions/dlgs/programs/mc_budgets.html under the Sample Resolutions heading. The EEOC guidance at issue can be reviewed at https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm. These materials should be reviewed with labor counsel and human resources personnel to ensure compliance.

THIS NOTICE HAS BEEN SENT TO THE FOLLOWING OFFICIALS: Municipal Clerk, Chief Financial Officer / County Freeholder Board Clerk, Chief Financial

LFN 2017-27

December 18, 2017

Contact Information

Director's Office

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F. 609.633.6243

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Municipal & County Budgets: Certifying Compliance with Federal Civil Rights Requirements

P.L. 2017, c. 183, signed into law by Governor Christie on August 7, 2017, amends the Local Budget Law to require municipal and county governing bodies to certify compliance with certain Federal civil rights requirements when submitting their approved budgets with the Division. Specifically, the governing body must certify that their municipality's or county's hiring practices comply with the United States Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," (hereinafter, "EEOC Enforcement Guidance"). A model group affidavit and resolution can be found on the "Municipal and County Budgets" section of the Division's website under the heading "Sample Resolutions".

EEOC's Enforcement Guidance discusses how an employer's use of criminal history records when deciding whether to select, promote, and retain employees may in some instances violate Title VII's prohibition against employment discrimination on the basis of race or national origin. Policies on the use of criminal history when making personnel decisions may violate Title VII under disparate treatment or disparate impact.

Discrimination on the basis of disparate treatment may occur when an employer treats criminal history information differently for different applicants or employees based on their race or national origin. Disparate impact-based discrimination may occur when an employer's neutral policy (e.g. excluding all applicants from employment based on certain criminal conduct) may disproportionately impact some individuals protected under Title VII and the policy is not job related and consistent with business necessity.

P.L. 2017, c. 183 encourages municipalities and counties to ensure their employment practices follow the EEOC Enforcement Guidance and comply with Title VII. Labor counsel and human resources personnel should review their municipality's or county's employment practices with governing body members and work with their governing bodies to ensure compliance.

With the rollout of the new Financial Automation Submission Tracking (FAST) solution, the group affidavit executed by the governing body along with the adopted resolution shall be kept on file with the municipality or county rather than submitted to the Division. In order to submit the budget, the CFO must certify that the governing body's executed certification is on file and available for inspection.

Approved: Timothy J. Cunningham, Director

Document	Internet Address
P.L. 2017, c.183	http://www.njleg.state.nj.us/2016/Bills/PL17/183_.PDF
EEOC Guidance – Using Criminal History in Making Personnel Decisions	https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm
Model Group Affidavit & Resolution: Compliance with EEOC Enforcement Guidance	http://www.nj.gov/dca/divisions/dlgs/programs/mc_budgets.html

**GOVERNING BODY CERTIFICATION OF COMPLIANCE WITH THE
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S
"Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment
Decisions Under Title VII of the Civil Rights Act of 1964"**

FORM OF RESOLUTION

WHEREAS, N.J.S.A. 40A:4-5 as amended by P.L. 2017, c.183 requires the governing body of each municipality and county to certify that their local unit's hiring practices comply with the United States Equal Employment Opportunity Commission's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964," *as amended*, 42 U.S.C. § 2000e *et seq.*, (April 25, 2012) before submitting its approved annual budget to the Division of Local Government Services in the New Jersey Department of Community Affairs; and

WHEREAS, the members of the governing body have familiarized themselves with the contents of the above-referenced enforcement guidance and with their local unit's hiring practices as they pertain to the consideration of an individual's criminal history, as evidenced by the group affidavit form of the governing body attached hereto.

NOW, THEREFORE BE IT RESOLVED, That the *(name of governing body)* of the *(name of local unit)*, hereby states that it has complied with N.J.S.A. 40A:4-5, as amended by P.L. 2017, c.183, by certifying that the local unit's hiring practices comply with the above-referenced enforcement guidance and hereby directs the Clerk to cause to be maintained and available for inspection a certified copy of this resolution and the required affidavit to show evidence of said compliance.

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING HELD ON *(insert meeting date)*.

Clerk

**GOVERNING BODY CERTIFICATION PURSUANT TO P.L. 2017, C.183 OF COMPLIANCE
WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION'S
"Enforcement Guidance on the Consideration of Arrest and Conviction Records in
Employment Decisions Under Title VII of the Civil Rights Act of 1964"**

**GROUP AFFIDAVIT FORM FOR MUNICIPALITIES AND COUNTIES
NO PHOTO COPIES OF SIGNATURES**

STATE OF NEW JERSEY
COUNTY OF *(Insert County Name)*

We, members of the governing body of the *(Name of local unit)* being duly sworn according to law,
upon our oath depose and say:

1. We are duly elected (or appointed) members of the *(insert name of governing body)* of the
(name of local unit) in the county of *(name of county)*;
2. Pursuant to P.L. 2017, c.183, we have familiarized ourselves with the contents of the United
States Equal Employment Opportunity Commission's "Enforcement Guidance on the
Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of
the Civil Rights Act of 1964," *as amended*, 42 U.S.C. § 2000e *et seq.*, (April 25, 2012);
3. We are familiar with the local unit's hiring practices as they pertain to the consideration of an
individual's criminal history;
4. We certify that the local unit's hiring practices comply with the above-referenced enforcement
guidance.

(L.S.)	(L.S.)
_____	_____
(L.S.)	(L.S.)
_____	_____
(L.S.)	(L.S.)
_____	_____
(L.S.)	(L.S.)
_____	_____
(L.S.)	(L.S.)
_____	_____

Sworn to and subscribed before me this
_____ day of _____
Notary Public of New Jersey

Clerk

The Municipal Clerk (or Clerk of the Board of Chosen Freeholders as the case may be) shall set forth
the reason for the absence of signature of any members of the governing body.

IMPORTANT: This certificate must be executed before a municipality or county can submit its
approved budget to the Division of Local Government Services. The executed certificate and the
adopted resolution must be kept on file and available for inspection.