



## **Seattle City Council Passes Ordinance Which Will Restrict Employers' Inquiry into and Use of Criminal History Records**

Seattle City Council passed Council Bill 117796 on June 10, 2013 which will dramatically impact employers' ability to ask about, and to use, criminal history records when making employment decisions. The below requirements are in addition to the Fair Credit Reporting Act (FCRA) processes and have requirements that are reflective of the EEOC Guidance. You may read the text of the Ordinance [here](#).

### **Who does this affect?**

The ordinance will apply to all private employers with one or more employees, including any employer designee or person acting in the interest on behalf of the employer, such as job placement, referral, and employment agencies.

The impacted positions will be for those individuals who perform any service for the employer and the physical location in which these services are provided are within the City of Seattle at least 50% of the time.

### **When does this go into effect?**

This will go into effect **November 1, 2013** if Mayor McGinn signs into law as expected.

### **What is prohibited?**

- **No blanket exclusions:** No employer shall advertise, publicize, or implement any policy or practice that automatically or categorically excludes all individuals with any arrest or conviction record from any employment position that will be performed in whole or in substantial part (at least 50% of the time) within the City.
- **No background checks or inquiries prior to initial screening:** An employer may perform a criminal background check on a job applicant or require a job applicant to provide criminal history information, but only after the employer has completed an initial screening of applications or "resumes to eliminate" unqualified applicants. Starting November 1, 2013, the employer may not request criminal history information on the initial application (Ban the Box) unless the application is completed after the initial screening.
- **No adverse action solely on arrest record:** Employers may inquire about the conduct related to an arrest record. Employers shall not carry out a tangible adverse employment action solely based on the conduct relating to an arrest unless the employer has a legitimate business reason for taking such action.
- **Restriction on adverse action related to individual's criminal conviction record and pending charges:** Employers may not carry out a tangible adverse employment action "solely based on" an employee's or applicant's criminal conviction record or pending criminal charge unless the employer has a legitimate business reason for taking such action.

A "Tangible adverse employment action" means a decision by an employer to reject an otherwise qualified job applicant, or to discharge, suspend, discipline, demote, or deny a promotion to an employee.

- **Must hold open position for waiting period:** Before taking any tangible adverse employment action the employer shall identify to the applicant or employee the record(s) or information on which they are relying and give the applicant or employee a reasonable opportunity to explain or correct that information.



### **What is a “legitimate business reason?”**

A "legitimate business reason" is where an employer believes in good faith that the nature of the criminal conduct underlying the conviction or the pending criminal charge either will have a negative impact on the employee's or applicant's fitness or ability to perform the position or will hard and cause injury to people, property, business reputation, or business assets.

They employer shall also consider the following factors:

- the seriousness of the underlying criminal conviction or pending criminal charge;
- the number and types of convictions or pending criminal charges;
- the time that has elapsed since the conviction or pending criminal charge, excluding periods of incarceration;
- any verifiable information related to the individual's rehabilitation or good conduct, provided by the individual;
- the specific duties and responsibilities of the position sought or held, and;
- the place and manner in which the position will be performed.

### **Are there any exceptions?**

The prohibitions in the ordinance do not apply to the following types of employers:

- The United States government;
- The State of Washington;
- Any county or local government other than the City of Seattle

### **What do employers need to follow if they decide to take an adverse employment decision?**

- Before taking any tangible adverse employment action based on an applicant's or employee's criminal conviction record, the conduct relating to an arrest record, or pending criminal charge, the employer must identify the record(s) or information on which they are relying and give the applicant or employee a reasonable opportunity to explain or correct that information.
- Employers must hold open a position for a minimum of two business days after notifying an applicant or employee that they will be making an adverse employment decision based on their criminal conviction record, the conduct relating to an arrest record, or pending charge in order to provide an applicant or employee a reasonable opportunity to respond, correct or explain that information.

### **Recommendations**

You may want to review, and discuss with your legal counsel, your organization's policies, procedures, and job posting to confirm they comply with this new legislation.

### **Contact Accurate Background**

Click [here](#) for more in-depth information from law firm Littler Mendelson regarding this new legislation. For additional questions, please contact Accurate Background at 800.216.8024.