

Article - Fair Chance Hiring

Section 1 - Findings.

- A. The city commission finds that denying an employment opportunity to an otherwise qualified person based on the person's criminal history that is not relevant to the job under consideration:
 - a. is unjust;
 - b. is detrimental to the health, safety, and welfare of the residents of the city;
 - c. prevents the reintegration of the person into the community;
 - d. creates a burden on public resources and law enforcement;
 - e. contributes to crime and recidivism; and
 - f. contributes to unemployment and harms the local economy.

- B. The city commission further finds that it is within the police power and the responsibility of the city to remedy the problems enumerated in subsection (A).

Section 2 - Definitions.

In this chapter:

- A. *Adverse action* means a refusal to hire, a refusal to promote, or the revocation of an offer of employment or promotion.

- B. *Application* means a written or oral expression of interest in a job by an individual made in compliance with the employer's established criteria for receiving expressions of interest.

- C. *Arrest* means being apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement agency due to an accusation or suspicion that the person committed a crime.

- D. *Conditional employment offer* means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's evaluation of the individual's criminal history, and may be conditioned on any pre-employment medical examinations authorized under the Americans with Disabilities Act (ADA).

- E. *Criminal accusation* means an accusation that an individual has committed a crime, lodged by a law enforcement agency through an indictment, information, complaint, or other formal charge.
- F. *Criminal history* means a conviction, plea of nolo contendere, or deferred adjudication arising from a felony or misdemeanor criminal accusation, made under state law, federal law, or a comparable law of another state of the United States.
- G. *Employment* means to work for an employer for pay. The term includes full time work, part time work, temporary or seasonal work, contract work, casual or contingent work, work through the services of a temporary or other employment agency, and participation in a vocational, apprenticeship, or educational training program.
- H. *Employer* means any person who has five or more employees for each working day in each of four or more calendar weeks in the current or preceding calendar year, and any agent of such a person. The term includes an agency acting on behalf of an employer. The term does not include:
 - a. the United States;
 - b. a corporation wholly owned by the government of the United States;
 - c. the state or a state agency; or
 - d. a political subdivision of the state.
- I. *Individualized assessment* means an evaluation of the criminal history of an individual that includes, at a minimum, the following factors:
 - a. the frequency and seriousness of any offenses in the individual's criminal history;
 - b. the age of the individual at the time of the offense;
 - c. the length of time since the offense;
 - d. the nature and duties of the job for which the individual has applied; and
 - e. any information demonstrating the individual's rehabilitation and good conduct since the occurrence of the criminal offense.
- J. *Job* means an employment position with an employer for which the employer has solicited or accepted applications and which the employer is currently attempting to fill.
- K. *Staffing agency* means an employer that:

- a. assigns individuals employed by it to perform work for another employer;
and
 - b. retains the obligation to pay such individuals for the work performed for the other employer.
- L. *Staffing pool* means a list of individuals retained by a staffing agency before the assignment of a specific job to perform for another employer.

Section 3 - Applicability.

- A. This chapter applies to an employer.
- B. This chapter does not apply to a job for which a federal, state, or local law, or compliance with legally mandated insurance or bond requirement disqualifies an individual based on criminal history.
- C. Nothing in this chapter limits an employer's authority to withdraw a conditional offer of employment for any lawful reason, including the determination that an individual is unsuitable for the job based on an individualized assessment of the individual's criminal history.

Section 4 - Fair chance hiring practices.

- A. An employer may not publish or cause to be published information about a job covered by this chapter that states or implies that an individual's criminal history automatically disqualifies the individual from consideration for the job.
- B. An employer may not solicit or otherwise inquire about the criminal history of an individual in an application for a job covered by this chapter.
- C. An employer may not solicit or otherwise inquire about an arrest or criminal accusation made against an individual, which:
 - a. is not then pending against the applicant; or
 - b. did not result in a conviction, plea of nolo contendere, or deferred adjudication.
- D. An employer may not solicit criminal history information about an individual or consider an individual's criminal history unless the employer has first made a conditional employment offer to the individual. This does not preclude an

employer from explaining to applicants, in writing, the individualized assessment system that the employer uses to consider criminal history.

- E. An employer may not refuse to consider employing an individual in a job covered by this chapter because the individual did not provide criminal history information before the individual received a conditional employment offer.
- F. An employer may not take adverse action against an individual because of the individual's criminal history unless the employer has determined that the individual is unsuitable for the job based on an individualized assessment conducted by the employer.
- G. Prior to taking adverse action against an individual because of the individual's criminal history, an employer must:
 - a. inform the individual that the employer is planning to take adverse action based on the individual's criminal history;
 - b. provide the individual with the criminal history records used by the employer in consideration of the individual's application; and
 - c. provide the individual a reasonable opportunity to provide the employer with additional context about the criminal history records and any information demonstrating the individual's rehabilitation and good conduct since the occurrence of the criminal offense.
- H. An employer who takes adverse action against an individual based on the individual's criminal history must inform the individual in writing that:
 - a. the adverse action was based on the individual's criminal history; and
 - b. the individual has the opportunity to file a complaint with the Office of Equity & Inclusion.
- I. Notwithstanding any other part of this chapter, a staffing agency may solicit criminal history information about an individual and make an individualized assessment of an individual's criminal history when the staffing agency has identified a job to which the individual will be employed or placed in a staffing pool.

Section 5 - Retaliation prohibited.

- A. An employer may not take adverse action against an individual because the individual has reported a violation of this chapter by an employer, or has participated in an administrative proceeding under this chapter.

Section 6 - Administration.

- A. The Office of Equity & Inclusion shall:
 - a. educate employers and residents about this chapter;
 - b. receive and investigate complaints, including anonymous complaints, alleging a violation of this chapter;
 - c. enforce this chapter; and
 - d. adopt rules necessary to implement this chapter.

- B. An individual claiming to be aggrieved by a violation of this chapter may file a complaint with the Office of Equity & Inclusion, in accordance with the procedures set forth in Section 8-50 of Article III of Chapter 8.

- C. To be considered by the Office of Equity & Inclusion, a complaint alleging a violation of this chapter must be filed no later than the 90th calendar day after the individual receives knowledge of the alleged violation, but in no event later than one year from the date of the alleged violation.

- D. If the Office of Equity & Inclusion finds that a violation of this ordinance has occurred it shall assess a civil penalty as provided in Section 7.

- E. The administrative remedies referenced in this chapter are exclusive. A person claiming to be aggrieved by a violation of this chapter shall have no private cause of action in any court based on a violation of this chapter.

Section 7 - Civil penalty.

- A. An employer who violates this chapter is liable for the following civil penalties, of which half shall be awarded to the complainant:
 - a. For employers that employ 5 to 30 employees, a fine of up to \$500;
 - b. For employers that employ 31 to 99 employees, a fine of up to \$1,000; or
 - c. For employers that employ 100 or more employees, a fine of up to \$2,000.

- B. For a first-time violation of this chapter by an employer, the Office of Equity & Inclusion may instead issue a warning if the employer attends an appropriate training session about compliance with this chapter.

- C. An employer who violates Section 4(A) or Section 4(B) of this chapter is liable for no more than one civil penalty for each job to which the violation relates.

D. This section does not create a criminal offense.

Section 8 - Reporting requirements.

A. The Office of Equity & Inclusion shall maintain data on the number of complaints filed pursuant to this chapter, demographic information on the complainants, the number of investigations it conducts, and the disposition of every complaint and investigation.

B. Data maintained by the Office of Equity & Inclusion pursuant to subsection (A) of this section shall be submitted to the city commission annually, beginning one year from the effective date of this act.