

Seattle City Council Votes to Limit Inquiries into Job Applicants' Criminal Backgrounds

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The Seattle City Council has voted unanimously to prohibit employers from inquiring about an applicant's criminal record or excluding from consideration for employment during the initial stage of the hiring process those with an arrest or criminal record. [Council Bill 117796](#) will take effect on November 1, 2013, if, as expected, Seattle Mayor Mike McGinn (D) signs the measure.

Coverage

The Council Bill prohibits employers from categorically excluding from employment in positions that will be performed at least 50 percent of the time in Seattle individuals with arrest or conviction records.

The ban would cover employers with one or more employee, and job placement, referral, and employment agencies. It would apply to all advertisements for positions, employment applications, and any employment policy or practice.

However, the proposed ban would not apply to the following applicant or employee:

- An individual whose job duties or prospective job duties include law enforcement, policing, crime prevention, security, criminal justice, or private investigation services; or
- An individual who will or may have unsupervised access to children under 16 years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment.

Permitted Inquiries

The Council Bill would allow employers to ask about an applicant's criminal or arrest record *after* an initial screening to eliminate unqualified applicants. However, employers will be prohibited from taking any "tangible adverse employment action" based solely on an arrest record. A "tangible adverse employment action" is defined as "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."

The Council Bill also prohibits employers from taking any tangible adverse employment action based solely on the facts underlying an arrest, a conviction record or a pending criminal charge, unless the employer has a "legitimate business reason" for doing so. A "legitimate business reason" exists where, based on information known to the employer at the time the employment decision is made, the 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 sought or held; or
- will harm or cause injury to people, property, business reputation, or business assets, and the employer has considered 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.

Meet the Authors



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Correction Period

Similar to the federal Fair Credit Reporting Act's notice requirements, before an employer takes any tangible adverse employment action based on an applicant's or employee's criminal conviction record, conduct relating to an arrest record, or pending criminal charge, the Council Bill requires an employer to:

- identify to the individual the information on which it relies;
- hold the position open for at least two business days upon notification; and
- allow the individual a reasonable opportunity to respond, correct or explain that information.

Employers may hold a position open for more than two days to resolve questions or issues regarding the individual's criminal history.

Remedies

There is no private right of action under the Council Bill. However, the Seattle Office for Civil Rights may investigate complaints of alleged violations and issue a warning and offer of assistance for the first offense. An employer may be fined up to \$750 for a second offense, and up to \$1,000 for any subsequent offenses.

Seattle employers should consider reviewing their employee recruitment information and materials, such as advertisements, job postings, position descriptions, employment applications, and hiring and promotion policies, to ensure compliance with the Council Bill 117796.

If you have any questions about this or other workplace developments, please contact the Jackson Lewis attorney with whom you regularly work.

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