

Title VII of the Civil Rights Act of 1964, as amended and therefore Federal Courts have held that employers may not use an applicant's criminal record as an absolute bar to employment, but have allowed employers to consider a prior criminal record as a factor in making individual hiring decisions, as long as the employer took certain factors into account; and

**WHEREAS**, these factors are: 1) The nature and gravity of the offense or conduct; 2) The time that has passed since the offense or conduct and/or completion of the sentence; and 3) The nature of the job held or sought; and

**WHEREAS**, accordingly, when the City of Atlanta adopted a policy of prohibiting unfair discrimination against applicants for City employment due to their prior criminal history pursuant to Ordinance 14-O-1399, the Atlanta City Council provided that any adverse hiring decisions based on criminal history must be based on how the criminal history relates to the position's responsibilities in accordance with the following considerations: 1) whether the applicant committed the offense; 2) the nature and gravity of the offense; 3) the time since the offense; and 4) the nature of the job for which the applicant has applied; and

**WHEREAS**, consistent with the standards employed by the City in order to balance its interest in not unlawfully discriminating against job applicants as a result of their criminal histories, it is the desire of the Atlanta City Council to clarify that nothing in any provisions in the Human Relations Code to include persons directly impacted by the criminal legal system in the class of persons who may be aggrieved by alleged discrimination or unlawful practices under the Human Relations Code shall prohibit employers from making hiring decisions in accordance with the considerations described herein.

**THE CITY COUNCIL OF THE CITY OF ATLANTA GEORGIA HEREBY ORDAINS**, as follows:

**SECTION 1:** The City of Atlanta Code of Ordinances Chapter 94 (Human Relations) Article II Section 94-10 (Definitions) be amended such that the definition of "Discrimination or discriminatory practice or act" shall read as follows (with permanent additions in underlined font and permanent deletions in strikethrough font):

*Discrimination or discriminatory practice or act* means any action or failure to act, whether by a single act or part of a practice, the effect of which is to adversely affect or differentiate between or among individuals, because of an individual's, or the perception of an individual's race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, age, disability, criminal history, or the use of a service animal.

**SECTION 2:** The City of Atlanta Code of Ordinances Chapter 94 (Human Relations) Article II Section 94-11 (Policy) be amended such that it shall read as follows (with permanent additions in underlined font and permanent deletions in strikethrough font):

Sec. 94-11. Policy.

In the city, with its great cosmopolitan population consisting of large numbers of people of every race, color, creed, religion, sex, marital status, parental status, familial status, sexual orientation, gender expression, national origin, gender identity, criminal history status, and age, many of them with physical and mental disabilities, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of differences of race, color, creed, religion, sex, marital status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, age, criminal history status, and disability. The council finds and declares that prejudice, intolerance, bigotry and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the very institutions, foundations and bedrock of a free democratic society.

**SECTION 3:** The City of Atlanta Code of Ordinances Chapter 94 (Human Relations) Article II Section 94-37 (Composition; appointment; terms) be amended such that it shall read as follows (with permanent additions in underlined font and permanent deletions in strikethrough font):

Sec. 94-37. Composition; appointment; terms.

The human relations commission shall consist of seven members, divided into three classes—Class A, Class B, and Class C. Class A shall contain three members, and Class B and Class C shall each contain two members. After the phase-in period, members shall hold office for a three-year term staggered so that the membership terms of only one class of members shall expire each year. The initial members shall be appointed and designated to a class by the president of the council no later than January 1, 2001. The term of office of the initial Class A members shall expire on January 1, 2002, the term of office of the initial Class B members shall expire on January 1, 2003; and the term of office of the initial Class C members shall expire on January 1, 2004. After January 1, 2002, at the expiration of the terms of the initial Class A members, one Class A member shall be appointed by the president of council, one shall be appointed by the Mayor and one shall be appointed by the at-large councilmember in Post 1 in coordination with the councilmembers for Districts 1 through 4. At the expiration of the terms of the initial two Class B members, one Class B member shall be appointed by the mayor and one shall be appointed by the at-large councilmember in Post 2 in coordination with the councilmembers for Districts 5 through 8. At the expiration of the terms of the initial two



Class C members, one Class C member shall be appointed by the president of council and one shall be appointed by the at-large councilmember in Post 3 in coordination with the councilmembers for Districts 9 through 12. At least one of the commission members appointed by the president of the council shall possess, in addition to the general qualifications set out in the Charter regarding members of the commission, a license to practice law in the State of Georgia and shall be an active member of and in good standing with the State Bar of Georgia. No person shall be appointed for more than two consecutive three-year terms. The membership of the commission shall reflect as nearly as practicable, the diversity of individuals protected under this ordinance and shall be comprised without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, criminal history status, gender identity, or gender expression.

**SECTION 4:** The City of Atlanta Code of Ordinances Chapter 94 (Human Relations) Article II Section 94-41 (Functions) subsection (4) be amended such that it shall read as follows (with permanent additions in underlined font and permanent deletions in strikethrough font):

(4) Developing human relations plans and policies for the city and assisting in their execution and making investigations and studies appropriate to effectuate this article and to issue such publications and such results of investigations and research as in its judgment will tend to inform persons of the rights assured and remedies provided under this article, to promote goodwill and minimize or eliminate discrimination because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability.

**SECTION 5:** The City of Atlanta Code of Ordinances Chapter 94 (Human Relations) Article V Section 94-110 (Policy) be amended such that it shall read as follows (with permanent additions in underlined font and permanent deletions in strikethrough font):

Sec. 94-110. Policy.

The council declares that it is the policy of the city, in the exercise of its police powers for the protection of the public health, safety, and general welfare, and for the maintenance of peace and good government, to assure equal employment opportunity to all persons, free from restrictions and prejudice based upon race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, and disability. The human relations commission established in article II of this chapter is vested with authority to investigate alleged incidents of discrimination and make recommendations to the mayor and appropriate city agency and to secure a response within 30 days

pursuant to the provisions of this article in furtherance of this policy and in accordance with the procedures set forth in article VI of this chapter.

**SECTION 6:** The City of Atlanta Code of Ordinances Chapter 94 (Human Relations) Article V Section 94-112 (Unlawful Employment Practices) be amended such that it shall read as follows (with permanent additions in underlined font and permanent deletions in strikethrough font):

Sec. 94-112. Unlawful employment practices.

(a) *Employer practices.* It shall be an unlawful employment practice for an employer:

(1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment, because of such individual's race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability; or

(2) To limit, segregate, or classify his or her employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of such individual's race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability.

(b) *Employment agency practices.* It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his or her race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability, or to classify or refer for employment any individual on the basis of his or her race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, or disability.

(c) *Labor organization practices.* It shall be an unlawful employment practice for a labor organization:

(1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his or her race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability;



(2) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or as an applicant for employment, because of such individual's race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability; or

(3) To cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) *Training programs.* It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his or her race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) *Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception.* It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or disability when religion, sex, or disability is a bona fide occupational qualification for employment and, in the case of disability, the employer, labor organization, employment agency, or joint labor-management committee has made reasonable accommodation for the disability to the full extent required by the Americans With Disabilities Act, codified at 42 U.S.C. § 12101.

(f) *Prohibition of discriminatory use of test scores.* It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability.

(g) *Impermissible consideration of protected factors in employment practices.* Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, gender expression, criminal history status, age, or disability was a motivating factor for any employment practice, even though other factors also motivated the practice.

**SECTION 7:** The City of Atlanta Code of Ordinances Chapter 94 (Human Relations) Article V Section 94-112 (Exclusions from unlawful employment practices) be amended to add new subsections (3) and (4) which shall read as follows (with permanent additions in underlined font):

(3) Any adverse employment decision based on criminal history status shall not be considered a violation of this Chapter where such a decision was based on how the criminal history related to the position's responsibilities in accordance with the following considerations: 1) whether the applicant committed the offense; 2) the nature and gravity of the offense; 3) the time since the offense; and 4) the nature of the job for which the applicant has applied.

(4) Notwithstanding any other provision in this section, nothing in this Chapter shall prohibit an employer from making an adverse employment decision based on criminal history status when related to positions where certain convictions or violations are a bar to employment in that position under state or federal law, including but not limited to positions that involve work with children and positions in law enforcement.

**SECTION 8:** That the amendments in this ordinance shall become effective immediately upon approval.

**SECTION 9:** That the Municipal Clerk is instructed to retain all legislative history references in the codified version of Chapter 94, including Editor's notes, and shall not delete any such references, but shall amend them to include reference to this ordinance.

**SECTION 10:** That all ordinances and part of ordinances in conflict herewith are hereby waived to the extent of the conflict.