SEATTLE OFFICE FOR CIVIL RIGHTS

Seattle Job Assistance Legislation
Regulating the use of criminal history in employment decisions

Frequently Asked Questions

This Frequently Asked Questions (FAQ) sheet addresses some of the most common questions about the ordinance. If you have a question not covered by this FAQ, please contact Brenda Anibarro at 206-684-4514 or e-mail Brenda.Anibarro@Seattle.gov.

1. Why is this ordinance needed?

City Council passed this ordinance because the incarceration rate of the United States has tripled since 1980 and is nearly eight times its historic average. An estimated one in every three to four adults in the United States has a criminal record on file in state criminal history databases. This is an issue that impacts all of society. At the same time, racial disparities in incarceration rates have resulted in devastating impacts on communities of color. African Americans are 3.8% of Washington's population but account for nearly 19% of the state's prison population and Native Americans who are 1.8% of the state population are 4.3% of the state's prison population. Racial disparities in incarceration rates mean that blanket exclusions from employment based on any criminal history have a disparate impact on communities of color. Reducing adverse employment actions against persons with criminal records will help these persons reenter society and become productive residents, make the community safer from recidivism and victimization, reduce racial disparities in the criminal justice system and community well-being, and reduce the cost of criminal justice and save tax dollars.

2. What does the ordinance do?

Seattle Municipal Code (SMC) 14.17 regulates the use of criminal history in employment decisions. This ordinance prohibits employers from using criminal convictions as the basis for denying employment for qualified job applicants or employees unless there is a legitimate business reason to support an employer's actions. The ordinance addresses job advertisements, job applications, timing of criminal background screening and considerations to be taken when determining suitability of employment. The ordinance applies to job applicants and employees who work within Seattle City limits. The ordinance also prescribes penalties, remedies and enforcement procedures.

3. When does the ordinance take effect?

The ordinance will take effect on November 1, 2013.

4. Does the ordinance apply to all employers?

The ordinance applies to employers with one or more employees and includes job placement, referral and employment agencies for jobs within Seattle City limits. It does not apply to the U.S. government, the State of Washington, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary; or any county or local government other than the City of Seattle.

5. Does the ordinance apply to all applicants and employees?

The ordinance applies to job applicants, candidates and employees who work within Seattle City limits. Employees include any individual who performs any services for an employer, when the physical location of such services is in whole or in substantial part (at least 50% of the time) within Seattle.

6. Are there any jobs or types of positions that the ordinance does not apply?

The ordinance does not apply to individuals whose job duties or prospective job duties include law enforcement, policing, crime prevention, security, criminal justice, or private investigation services. In addition, the law does not apply to individuals who, during the course of their employment, will or may have unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults.

7. Who enforces this ordinance?

The Seattle Office for Civil Rights (SOCR), a department within the City of Seattle, is responsible for administering and enforcing the Ordinance. SOCR also provides technical support to employers and employees. For more information, please call 206-684-4514 or e-mail Brenda.Anibarro@seattle.gov.

ORDINANCE REQUIREMENTS

8. What are the requirements relating to job advertisements?

Job advertisements and publicity related to employment may not automatically or categorically exclude 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 Seattle. For example, job advertisements that state “no felons” are no longer allowed.

9. Can an employer ask about criminal history on a job application?

Under the new law, employers may require an applicant to provide criminal history information **only after** the employer has completed an initial screening of applications or resumes to eliminate unqualified applicants.

10. Can an employer conduct a criminal background check on job applicants?

Under the new law, employers may conduct a criminal background check **only after** the employer has completed an initial screening of applications or resumes, to eliminate unqualified applicants.

11. Are blanket or categorical exclusions allowed?

The ordinance prohibits employment policies or practices that automatically or categorically exclude 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 Seattle.

12. Can a person be denied employment, disciplined or demoted because of an arrest record?

The ordinance prohibits employers from rejecting an otherwise qualified job applicant, or discharging, suspending, disciplining, demoting, or denying a promotion to an employee solely on the basis of an arrest record. Employers may inquire about the conduct related to an arrest record but can only take a tangible adverse employment action if there is a **legitimate business reason** for taking such action.

13. What about conviction records? Can a person be denied employment, disciplined or demoted because of a conviction record or pending criminal charges?

Employers may not reject an otherwise qualified job applicant, or discharge, suspend, discipline, demote, or deny a promotion to an employee based solely on a conviction record or pending criminal charge unless the employer has a **legitimate business reason** for taking such action.

14. What is a legitimate business reason?

The ordinance states that 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:

1. Will have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held, or

2. Will harm or cause injury to people, property, or business assets, and the employer has considered the following factors:

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

15. Does the employer need to give the applicant or employee a chance to explain or correct information?

Yes. Before taking an adverse action based on the conduct relating to an arrest, a conviction or a pending criminal charge, the employer shall let the applicant or employee know the information they are relying on and give the applicant or employee a reasonable opportunity to explain or correct that information.

16. Does the employer need to hold the position open while the applicant or employee explains or corrects wrong information?

Yes. Employers shall hold open the position for a minimum of two business days after notifying the applicant or employee that they will be making an adverse business decision solely on the basis of conduct relating to an arrest, a conviction or a pending criminal charge, and provide the person a reasonable opportunity to respond, correct or explain that information. After two business days, employers may, but are not required, to hold open a position until a pending charge is resolved or adjudicated or questions about an applicant's criminal conviction history are resolved.

17. Does this ordinance impact existing state and federal laws relating to criminal records?

No. Employers must still abide by the requirements of state or federal law. In the event of any conflict, state and federal requirements shall supersede the requirements of the ordinance. This includes Title VII of the Civil Rights Act of 1964, the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as amended, the Washington State Fair Credit Reporting Act, RCW 19.182, as amended, the Washington State Criminal Records Privacy Act, RCW 10.97, as amended, and state laws regarding criminal background checks, including those related to individuals with access to children or vulnerable persons, RCW 43.43.830, *et seq*., as amended.

18. What about records that have been vacated or sealed? Does this ordinance apply to those records?

Washington State laws address vacated and sealed records and what needs to be reported. This law does not apply to vacated, sealed or expunged records. For more information on the laws addressing vacated or sealed records contact the ACLU Second Chances Program at: http://aclu-wa.org/secondchances.

ENFORCEMENT

19. Once this ordinance is in effect, how are violations reported?

If you feel an employer has violated this ordinance you can file a charge with the Seattle Office for Civil Rights. Our services are free and impartial, and language and disability accommodations are available upon request. For more information call 684-4500.

20. What happens if an employer violates this ordinance?

The Seattle Office for Civil Rights (SOCR) is responsible for investigating complaints relating to violations of the ordinance. If an employer is found in violation and it is the first violation, the employer will receive a notice of infraction and an offer of assistance by SOCR to ensure future compliance. After a second violation the employer will be required to pay up to $750 to the applicant or employee who brought the charge forward. Third and subsequent violations will result in penalties up to $1000 paid to the applicant or employee who brought the charge forward.

21. What happens if an employer retaliates against an employee or job applicant?
Retaliation is illegal. Employers are prohibited from taking an adverse action or discriminating against employees who assert their rights under this ordinance in good faith. These rights include filing a complaint about alleged violations; participating in an investigation of alleged violations and; opposing any policy, practice or act that the ordinance prohibits.

22. If an employer violates this ordinance can a person file a lawsuit?

No. The ordinance does not create a private civil right of action. However, employees can contact the Seattle Office for Civil Rights(SOCR) to investigate alleged violations of the ordinance. SOCR conducts impartial investigations free of charge. Language and disability accommodations are available upon request. For more information call 684-4500.