SEATTLE OFFICE FOR CIVIL RIGHTS

FREQUENTLY ASKED QUESTIONS:

Seattle Job Assistance Ordinance

Seattle Municipal Code 14.17

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Frequently Asked Questions: Seattle Job Assistance Ordinance

The Seattle Jobs Assistance Ordinance took effect on November 1, 2013. The Ordinance regulates employers' use of criminal history in employment decisions regarding employees who work within Seattle city limits.

The Seattle Office for Civil Rights (SOCR) is responsible for administering and enforcing this Ordinance. SOCR also provides technical assistance to employers and employees.

This Frequently Asked Questions (FAQ) document addresses some of the most common questions about Seattle's Job Assistance Ordinance (Seattle Municipal Code 14.17). If you have a question not covered by this FAQ, please contact SOCR at 206-684-4500 or e-mail ocr_criminalrecordsquestions@seattle.gov.

A. OVERVIEW OF THE ORDINANCE

1. What does the Ordinance do?

The Ordinance regulates the use of criminal history in employment decisions. The Ordinance:

- Prohibits categorical exclusions in job ads.
- Prohibits criminal history questions on job applications and criminal background checks until after an employer conducts an initial screening to eliminate unqualified applicants.
- Requires a legitimate business reason to deny a job based on a conviction record.
- Requires an opportunity for the applicant or employee to explain or correct criminal history information, and for the employer to hold the position open for at least two business days once they have notified the applicant that the employer plans to take an adverse action.

2. Why is this Ordinance needed?

City Council passed the Ordinance for three reasons:

- **This issue impacts us all.** The incarceration rate of the United States has tripled since 1980 and is seven times its historic average. An estimated one in every four adults in the United States has a criminal record on file in state criminal history databases.
- **Racial equity.** 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. Native Americans are 1.8% of the state population but account for 4.3% of the state's prison population. Racial disparities in incarceration rates mean that blanket exclusions from employment based on criminal history have a disparate impact on communities of color.[1]

[1] For more information, please see *Washington State Department of Corrections* website at: http://www.doc.wa.gov/aboutdoc/statistics.asp

- **Public safety.** Reducing adverse employment actions against people with criminal records will support those individuals, strengthen communities, reduce recidivism and crime, reduce racial disparities in the criminal justice system, lower the cost of criminal justice and save tax dollars.

3. **Does having a job really help reduce the likelihood that someone will re-offend?**
   Yes. Employment is a key factor in reducing recidivism and improving public safety. For example:

   - According to an Illinois study that followed 1,600 individuals recently released from state prison, only 8% of those who were employed for a year committed another crime, compared to the state's 54% average recidivism rate[2].
   - In one study of former prisoners in Ohio, Texas and Illinois, researchers found that people who were employed and earning higher wages after release were less likely to return to prison during their first year of release[3].
   - The Justice Policy Institute compared state-level employment rates with crime rates and found that on average, states with the highest levels of unemployment had higher violent crime rates than states with lower unemployment levels. Increased employment and increased wages are associated with lower crime rates[4].

4. **When did the Ordinance take effect?**
   The Ordinance took effect on November 1, 2013.

5. **Are employers allowed an extension to implement the new rules of the Ordinance into their business practice and forms?**
   Yes. If no complaint has been filed with SOCR, an employer may request an extension. SOCR's Director can extend the implementation date for employers on a case-by-case basis. Employers must submit a request to the Director in writing and provide: a description of the changes necessary for compliance with the Ordinance; a process for adopting the changes; and a timeline for implementation. The Director will review the request and respond in writing within ten business days. To request an extension email patricia.lally@seattle.gov or write to:

   Patricia Lally
   Director, Seattle Office for Civil Rights
   810 Third Avenue, Suite 750
   Seattle, WA 98104

[2] American Correctional Association, 135th Congress of Correction, Presentation by Dr. Art Lurigio (Loyola University) Safer Foundation Recidivism Study (Aug. 8, 2005).
[3] Christy Visher, Sara Debus & Jennifer Yahner, Employment after Prison: A Longitudinal Study of Releasees in Three States, Justice Policy Center Research Brief (Oct. 2008), available at http://www.urban.org/UploadedPDF/411778_employment_after_prison.pdf
[4] Aliya Maseelall, Amanda Petteruti, Nastassia Walsh & Jason Ziedenberg, Employment, Wages and Public Safety, Justice Policy Institute (Nov. 2007) at 2-4, available at http://www.justicepolicy.org/images/upload/07_10_REP_EmploymentAndPublicSafety_AC.pdf.

If a complaint has been filed, the parties to the complaint can explore all avenues of resolution to the complaint, including investigation, mediation and settlement.

6. **How will the City collect data and measure the success of the Ordinance?**
   The Ordinance requires the Seattle Office for Civil Rights (SOCR) to collect data on the number of complaints filed, the demographic information of those who file complaints, the number of investigations conducted and the disposition of all complaints and investigations. SOCR will report this data to City Council every six months for two years after the Ordinance takes effect.

7. **Are there other laws like this in Washington State?**
   Yes. Since 1973, the State of Washington and its counties, cities, towns, municipal corporations, or quasi-municipal corporations must comply with state law (e.g. RCW 9.96A) regarding employment of people with prior arrest conviction records. The law says that a person cannot be denied a job solely based on a felony conviction. A person may be denied a job if the conviction directly relates to the job and if less than ten years have passed since the conviction.

8. **Does the Ordinance impact existing state and federal laws relating to criminal records?**
   No. Employers must still follow state and federal law. In the event of a conflict, state and federal requirements supersede the requirements of the Ordinance.

   These laws include Title VII of the Civil Rights Act of 1964; the federal Fair Credit Reporting Act, 15 U.S.C. 1681; the Washington State Fair Credit Reporting Act, RCW 19.182; the Washington State Criminal Records Privacy Act, RCW 10.97; 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*.

B. WHO IS AFFECTED

9. **Does the Ordinance apply to all employers?**
   The Ordinance applies to employers with one or more employees. The law also applies to job placement, referral and employment agencies that place individuals in jobs within Seattle city limits.

   The Ordinance does not apply to the U.S. government; the State of Washington, including the legislature and the judiciary; and any county or local government other than the City of Seattle. However, the State of Washington and its counties, cities, towns, municipal corporations, or quasi-municipal corporations must comply with state law (RCW 9.96A) with regard to employment of people with prior arrest conviction records.

10. **Does the Ordinance apply to companies that are headquartered or located outside of the City of Seattle?**
    Yes. The Ordinance applies to employee positions within Seattle, regardless of the location of the employer, corporation, or headquarters. The employer must adhere to the Ordinance for employee positions that perform a substantial part (at least 50% of the time) of their employment services in Seattle.

11. Does the Ordinance apply to all applicants and employees?

The Ordinance applies to job applicants, candidates and employees who work within Seattle City limits. "Employee" includes 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. See questions 12 through 16 for more details.

12. Does the Ordinance apply to volunteers?

No.

13. Are independent contractors employees and does the Ordinance apply to them?

No. An independent contractor is not considered an employee under the Ordinance. SOCR will determine on a case-by-case basis if someone is an employee or an independent contractor, using the "Economic Realities Test" that is used by Fair Labor Standards Act (FLSA) and the Washington State Minimum Wage Act (MWA). Under the economic realities test, factors for distinguishing an employee from an independent contractor include the:

- ❖ Degree of control that the business has over the worker.
- ❖ The worker's opportunity for profit or loss depending on the worker's managerial skill.
- ❖ The worker's investment in equipment or material.
- ❖ Degree of skill required for the job.
- ❖ Degree of permanence of the working relationship.
- ❖ Degree to which the services rendered by the worker are an integral part of the business.

14. Does the Ordinance apply to employees who work from multiple locations inside and outside of Seattle?

The Ordinance may apply depending on the circumstances. The Ordinance applies to employees who work in Seattle at least 50% of the time. For example:

Example #1: An employer's business is located in Portland, OR. One of the positions is required to work in Seattle three of every four weeks throughout the year. The employee returns to Portland for the fourth week of each month throughout the year. The Ordinance applies to this position because the employee works in Seattle 75% of the time.

Example #2: A Seattle-based business employs one full-time position in Bellevue, WA, for four of the five work days each week. The Ordinance does not apply to this position because the employee works outside of Seattle 80% of the time. The Ordinance does apply to this employer's other employees who work in Seattle at least 50% of the time.

Example #3: A transport company employs drivers who make deliveries throughout the region, including Seattle. The drivers work 40 hours/week.

- One full-time driver's position follows a regular route that includes 20 hours/week within Seattle. The Ordinance applies to this employee because he works in Seattle 50% of the time.

- Another full-time driver's position follows a regular route that includes only one day a week in Seattle. The Ordinance does not apply to this employee because she works in Seattle less than 50% of the time.
- A third full-time driver's position follows an irregular route that moves in and out of Seattle with no set schedule. The Ordinance may or may not apply to this employee. The employer will need to make a good-faith estimate of the percentage of time this position works in Seattle to determine if the Ordinance applies.

15. Does the Ordinance apply to individuals who work from their homes or another location in Seattle (telecommuting)?

The Ordinance may apply depending on the circumstances. Employees who work 50% or more of their time by telecommuting from a location within the City of Seattle are covered by the Ordinance. For example:

Example #1*:* An employee works for a business based in Everett, WA. The employee telecommutes from her home in Seattle on two days a week throughout the year. She works in Everett on the other three days of the week. The Ordinance does not apply to this employee because she works outside Seattle for 60% of the time.

Example #2: An employee works for a business based in Tacoma, WA. The employee telecommutes from his home in Seattle three days a week throughout the year. He works in Tacoma the other two days of the week. The Ordinance applies to this employee because he works in Seattle for 60% of the time.

Example #3: A Seattle-based tour company employs tour guides for three months each year. The guides work half of the time in Seattle during those three months. The Ordinance applies to these employees because they work in Seattle 50% of the time.

16. Does the Ordinance apply to employees who are temporary workers?

The Ordinance may apply depending on the circumstances. For example, a Seattle-based outdoor display company employs several positions for 6-month contracts.

- One position is contracted to work two months in Seattle and four months in Olympia, WA. The Ordinance does not apply to this position because the employee will work in Seattle only 33% of the time.
- Another position is contracted to work two months in Olympia and four months in Seattle. The Ordinance applies to this position because the employee will work in Seattle 67% of the time.

17. Does the Ordinance apply to employees who travel through (but do not stop in) Seattle for business?

The Ordinance likely does not apply to employees who travel through Seattle. For example, an employee splits her work time between Kent, WA, and Shoreline, WA. She stops in Seattle for gas en route to her two work sites. This employee is not covered by the Ordinance, since her time in Seattle is incidental to her work.

18. How does an employer or employee determine "a reasonable expectation" that 50% or more of the employee's work will be in Seattle?

An employee or employer may look to past years to determine whether s/he should reasonably expect the employee to work 50% of the time in Seattle. If the position or employer is new, the person may evaluate the job description and expected work of the individual, including the location of the work, to determine if it is reasonable to expect employees to work 50% of their time in Seattle.

19. Are there some jobs or positions that are not subject to the Ordinance?

Yes. The Ordinance does ***not*** apply to individuals whose job duties or prospective job duties include:

- Law enforcement;
- Policing;
- Crime prevention;
- Security;
- Criminal justice;
- Private investigation services.

Additionally, the law does not apply to individuals who will or may have unsupervised access to the following individuals during the course of their employment:

- Children under sixteen years of age;
- Developmentally disabled people; or
- Vulnerable adults.

Example #1 – unsupervised access: A summer camp is hiring for two positions:

- One opening seeks a counselor who will be responsible for 7 developmentally disabled young adults, including their sleeping arrangements. In this scenario, it is likely that the counselor will have unsupervised access to individuals with developmental disabilities. The Ordinance does not apply to this position, since it includes unsupervised access to developmentally disabled individuals.
- The other opening seeks a general maintenance worker to make repairs to the facilities as needed throughout the summer. The Ordinance applies to this position, since it does not include unsupervised access to developmentally disabled individuals.

Example #2 – unsupervised access: A non-profit organization provides mental health services to children younger than 16 and vulnerable adults. The organization is hiring for two positions.

- One opening seeks a mental health therapist who will conduct one-to-one counseling sessions. The Ordinance does not apply to this position because the person in this position will have unsupervised access to children younger than 16 and vulnerable adults.
- The other opening seeks a front lobby receptionist whose job duties do not include unsupervised access to children younger than 16 and vulnerable adults. The Ordinance

applies to this position, because this position will not have unsupervised access to children under age 16 or vulnerable adults.

20. When an employer uses a third-party recruiting firm, who is responsible for a violation – the firm or the employer?

Both the employer and the third-party recruiting firm must comply with the Ordinance, and both may be responsible for a potential violation. To determine parties' responsibility in specific situations, SOCR would review the actions and decisions of the firm and employer, as well as any agreement between the two entities.

21. Does the Job Assistance Ordinance apply to employment decisions of employers who are legally required to obtain a bond for their business?

Yes. Employers facing mandatory bonding requirements (under state and federal law or administrative regulation) must follow all aspects of the ordinance for hiring and employment decisions, including an individualized assessment of an applicant or employee's criminal record, evaluation of the potential impact of the criminal record on bondability and consideration of all legitimate business reason factors. However, if there is a direct conflict between the ordinance and the mandatory bonding requirements, then the state and federal law, or administrative regulations supersede ordinance requirements.

22. Does the Job Assistance Ordinance apply to employment decisions of employers who wish to obtain a non-mandatory bond for their business?

Yes. Employers who wish to secure non-mandatory bonds for their business must follow all ordinance requirements for hiring and employment decisions, including an individualized assessment of an applicant or employee's criminal record, evaluation of the potential impact of the criminal record on bondability and consideration of all legitimate business reason factors.

Example: A fidelity bond is a form of insurance that protects businesses from losses incurred by the dishonest acts of employees. Employers who wish to secure a fidelity bond must consider each applicant's criminal record on a case-by-case basis. If a criminal record will negatively impact bonding, an employer may consider this outcome during their analysis of the legitimate business reason factors. Employers also should consider options to mitigate the impact of criminal records such as temporary fidelity bonds provided at no charge by the Washington Bonding Program. More information about this free program is available from the Washington Employment Security Department (http://www.wa.gov/esd/oes/bond/).

C. ADVERTISING

23. What are the Ordinance's requirements about job advertisements?

Job advertisements and publicity related to jobs performed within Seattle cannot automatically or categorically exclude individuals with any arrest or conviction record. Job ads that state "no felons" or "no criminal background" are no longer allowed for jobs covered by the Ordinance.

24. Can an employer tell an applicant that a background check will need to be completed during the hiring process?

Yes. An employer can inform applicants and employees that it will conduct a criminal background check. However, SOCR suggests that employers adopt the following practices when informing individuals that they will conduct background checks:

a. Wait to inform applicants that a background check will be conducted until after applicants have been initially screened for minimum qualifications;
b. Include information on advertisements and applications that mention the rights of applicants under the Ordinance;

An employer should not use language that categorically excludes individuals that have criminal history and should not use language that gives the impression that such a person would be excluded. For instance, an employer should be cautious about using words like "a background check must be passed" because these words appear to require an applicant or employee to have no criminal history in order to be a successful candidate.

D. ASKING ABOUT CRIMINAL HISTORY INFORMATION ON APPLICATIONS

25. Are blanket or categorical exclusions allowed?

No. The Ordinance prohibits policies or practices that automatically or categorically exclude individuals with an arrest or conviction record from jobs in Seattle (at least 50% of the time). For example, an employer is prohibited from using language like "felons need not apply" or "no criminal history" in its advertisements and hiring process.

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

No. An employer may only ask about criminal history after an initial screening of applications to eliminate unqualified applicants.

27. Can an employer conduct a criminal background check on a job applicant?

Yes, but only after the employer has completed an initial screening of applications to eliminate unqualified applicants.

28. What is an initial screening?

An initial screening is a review of an applicant's qualifications to ensure that the applicant possesses the minimum qualifications that are necessary for the job. Depending on the employer's hiring process, an initial screening may be a first review of written applications for minimum qualifications or a verbal conversation with an applicant about their education or work experience.

29. Does the Ordinance limit how far back an employer can look into an applicant's history?

No. However, the employer must consider the length of time that has passed since the conviction, conduct, or charge. See Question 33-36 for examples of reasonable timeframes and studies.

E. USING CRIMINAL HISTORY INFORMATION IN EMPLOYMENT DECISIONS

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

No. The Ordinance prohibits employers from rejecting an otherwise qualified job applicant, or taking an adverse employment action (for example, discharging, suspending, disciplining, demoting, or denying a promotion) to an employee solely on the basis of an arrest record. Employers may ask about the conduct related to an arrest record but can only take an adverse employment action if there is a legitimate business reason.

31. What is a legitimate business reason for rejecting an applicant or taking an adverse action against an employee due to criminal history?

The Ordinance requires that employers consider certain factors to determine whether there is a legitimate business reason. A legitimate business reason exists if the employer, after considering the following factors, believes in good faith that the criminal conduct underlying a conviction or charge will either:

1. Have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held, or
2. Harm or cause injury to people, property, or business assets.

The factors that the employer must consider are:

- 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 provided by the individual related to his/her rehabilitation or good conduct.
- The specific duties and responsibilities of the position sought or held.
- The place and manner in which the position will be performed.

32. How does an employer show that a legitimate business reason exists?

It depends on the specific facts and circumstances. In an investigation, SOCR's assessment would be based on the totality of circumstances for the specific case. An employer should document all actions taken and why they were taken. Employers should retain all documents related to the hiring process, including notes from interviews, job description, applications and information provided by applicants.

33. How do employers demonstrate that a good faith belief exists?

Employers must provide sufficient evidence to show that they considered the factors listed in the definition of a legitimate business reason (see question 29). Employers can provide documentation of the decision process, including the records on which they relied and other relevant information, like the job description and verifiable information provided by the applicant or employee. It's a good idea to document the decision-making processes and the steps taken to comply with the Ordinance.

34. How do employers decide how much weight to place on verifiable information provided by an applicant or employee?

Employers must demonstrate that they have considered any verifiable information provided by the applicant or employee that relates to the individual's rehabilitation or good conduct. This includes the applicant's or employee's own statement explaining the record or action. Employers should be able to explain how and why they put weight to any given verifiable information and document their decisions.

35. Why does an employer need to consider the "time elapsed" since criminal conduct?

Studies show that the amount of time elapsed since the criminal conduct can impact the likelihood of an individual's doing it again in the future. Therefore, the "time elapsed" factor is relevant to whether a legitimate business reason exists to exclude an applicant or take action against an employee. Here are some examples. Please note that in all instances, the employer also must consider the other factors listed in Question 29.

Example #1 – misdemeanor 15 years ago*:* Jackson, a 35-year-old man, is applying for a job at an architectural firm. Fifteen years ago, Jackson was convicted of malicious mischief (a gross misdemeanor) for tagging the outside of a mom and pop grocery store. Jackson did not spend any time in jail but was on probation for a period of time. Jackson has not engaged in any other criminal conduct since then.

Analysis: Due to the long time since the conviction, the "time elapsed" factor would not strongly support the employer's claim of a legitimate business reason to exclude Jackson from consideration.

Example #2 – misdemeanor six months ago*:* Devon, a 25-year-old woman, is applying for an assistant property manager position. Six months ago, Devon was convicted of three counts of prostitution. Devon's sentence requires rehabilitation classes and completion of community services hours. Devon is currently on active probation.

Analysis: Because the time elapsed since the conduct is short, the "time elapsed" factor may support a legitimate business reason.

Example #3 – felony conviction two years ago: Jayden, a 40-year-old man, applied for a clerk's job at a grocery store. Two years ago, Jayden was released from jail after serving a three year sentence for felony assault. Six years ago, he was charged with urinating in public and possessing an open bottle of alcohol in a public park. Jayden committed three other assaults more than ten years ago. He has not had any subsequent run-ins with the criminal justice system.

Analysis: The Ordinance allows the employer to consider the time elapsed since conviction, excluding periods of incarceration. In this example, Jayden served three years in prison for the most recent conviction and has been out for two years. The "time elapsed" since the last conviction factor may support a legitimate business reason. However, it may not support a legitimate business reason for the ten-year-old assaults or the six-year-old municipal offenses.

36. Does an employer need to consider an applicant if s/he lied about their criminal history?

If an employer receives information from an applicant or employee that is inconsistent with the information the employer receives in a criminal history report, the employer must still give the applicant or employee an opportunity to correct errors by following the legitimate business reason analysis, before taking any adverse action.

The employer does not need to follow this process if the applicant or employee intentionally misrepresents this information. To ensure compliance, an employer should allow the applicant or employee an opportunity to correct this information. Background checks are not always accurate and may contain misleading information, mischaracterize the seriousness of offense or disposition of the offense, mismatch identities, or include sealed information.[5]

37. Why must an employer consider a certificate of rehabilitation as part of the verifiable information process?

An employer must consider a certificate of rehabilitation because, even after a person receives a certificate of rehabilitation for a conviction, the conviction may still appear on the person's criminal history report. The employee or applicant has a right to respond to, correct or explain the information that the employer receives on the criminal history report.

For example, Jane was convicted of assault. After serving her sentence and living in the community without committing crimes for a period of time, Jane received a certificate of rehabilitation for the assault conviction. When Jane applied for a job with R Company, the assault conviction appeared on Jane's criminal history report. R Company must give Jane an opportunity to respond to the information, explain it, and correct it, which includes permitting Jane to provide a certificate of rehabilitation and any other verifiable information. SMC 14.17.020(F)-(F). SHRR 80-120

38. What studies provide guidance on the likelihood of re-offense over time?

The following studies examine the likelihood of re-offense over time:

- Alfred Blumstein and Kiminori Nakamura, *Redemption in the Presence of Widespread Criminal Background Checks,* 47 CRIMINOLOGY 327 (2009). The study concluded that there may be a "point of redemption" for individuals arrested for certain offenses (i.e., a point in time where an individual's risk of re-offending or re-arrest is comparable to individuals with no prior criminal record) if they remain crime-free for a certain number of years.

- Megan C. Kurlychek, Robert Brame & Shawn D. Bushway, *Enduring Risk? Old Criminal Records and Predictions of Future Criminal Involvement*, 53 CRIME & DELINQUENCY 64 (2007). The study analyzed juvenile police contacts for an aggregate of crimes for 670 males born in 1942 and concluded that the risk of a new offense approximates that of a person without a criminal record after seven years.

[5] *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses.* April, 2012. National Consumer Law Center

- Megan C. Kurlychek, et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 CRIMINOLOGY & PUB. POL'Y 483 (2006). The study evaluated juvenile police contacts and arrest dates from Philadelphia police records for an aggregate of crimes for individuals born in 1958. It concluded that the risk of recidivism decreases over time, and that six or seven years after an arrest, an individual's risk of re-arrest approximates that of an individual who has never been arrested.

- Keith Soothill & Brian Francis, *When do Ex-Offenders Become Like Non-Offenders?*, 48 HOWARD J. OF CRIM. JUST., 373, 380-81 (2009). The study examined conviction data from Britain and Wales. It found that the risk of recidivism declined for groups with prior records and eventually converged within 10 to 15 years with the risk of those of the non-offending comparison groups.

39. What do studies say about how the age of a person at the time of the offense impacts the likelihood of recidivism?

The following studies examine how the age of the person at the time of offense may impact the likelihood of re-offense:

- Shawn Bushway et al., *The Predictive Value of Criminal Background Checks: Do Age and Criminal History Affect Time to Redemption?*, 49 CRIMINOLOGY 27, 52 (2011). The study found that recidivism rates tend to decline as ex-offenders' ages increase, and that an individual's age at conviction is a variable that has a "substantial and significant impact on recidivism." For example, the 26-year-olds in the study, with no prior criminal convictions, had a 19.6% chance of reoffending in their first year after their first conviction, compared to the 36-year-olds who had an 8.8% chance of reoffending during the same time period, and the 46-year-olds who had a 5.3% chance of reoffending.

- Patrick A. Langan & David J. Levin, *Bureau of Justice Statistics, U.S. Dep't of Justice, Special Report: Recidivism of Prisoners Released in 1994* (2002), http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf. The study found that, although 55.7% of ex-offenders aged 14 to 17 released in 1994 were reconvicted within three years, the percentage declined to 29.7% for ex-offenders aged 45 and older who were released the same year.

When considering the age of the person at the time of offense and making employment decisions, SOCR cautions employers to be mindful of age discrimination laws.

40. What do studies say about the employability of adolescents with convictions?

The following study discusses the employability of individuals who had convictions as adolescents.

- Brent W. Roberts et al., *Predicting the Counterproductive Employee in a Child-to-Adult Prospective Study*, 92 J. APPLIED PSYCHOL. 1427, 1430 (2007), http://internal.psychology.illinois.edu/~broberts/Roberts,%20Harms,%20Caspi,%20&%20Moffitt,%202007.pdf The study found that among New Zealand residents from birth to age 26,

"[a]dolescent criminal convictions were unrelated to committing counterproductive activities at work [such as tardiness, absenteeism, disciplinary problems, etc.]. According to the results of the study, people with an adolescent criminal conviction record were less likely to get in a fight with their supervisor or steal things from work.

F. GIVING NOTICE TO APPLICANTS / EMPLOYEES

41. Do employers need to give the applicant /employee a chance to explain or correct information about their criminal history?

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 / employee know the information they are relying on and give the person a reasonable opportunity to explain or correct that information.

42. How much can an employer follow up with the sources of "verifiable information," such as a social worker, parole officer, health care provider, etc. that an applicant or employee provides?

The Ordinance requires employers to consider any verifiable information provided by the applicant/employee. Employers should consult with legal counsel, human resources or research to determine whether following up with certain professionals would be a violation of other city, state or federal laws.

43. Can an employer ask an applicant for medical information that would otherwise be protected by HIPPA or other laws?

HIPPA (the Health Insurance Portability and Accountability Act of 1996) prevents covered entities such as healthcare providers from disclosing private information about medical history. An applicant/employee would need to give permission to their healthcare provider in order to have them provide medical information to an employer.

Employers should consult with legal counsel, human resources, or research to determine if doing so would violate other city, state, or federal laws, like the Americans with Disabilities Act and Genetic Information Nondiscrimination Act.

44. Are there requirements for how an employer notifies an employee that s/he is relying on criminal history information?

The Ordinance does not specify methods of notification. It does indicate that the employer must inform the individual in the manner most likely to reach the applicant or employee in the shortest amount of time.

It's a good idea to use the method of communication that will reach the applicant or employee most quickly, depending on the circumstances. This could include email, telephone, U.S. Postal Service, or in person communication. The employer should inform the applicant or employee of the information and records and provide the applicant or employee an opportunity to review the information and records.

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

Yes. Employers must hold open the position for a minimum of two business days after notifying the applicant / 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 a reasonable opportunity for the person to respond, correct or explain that information. After two business days, employers may hold open a position until questions about an applicant's criminal conviction history or a pending charge are resolved. However, employers are not required to do so beyond the two days.

46. If the employer decides not to hire the applicant for a reason other than the applicant's criminal history, does the employer need to perform a legitimate business reason analysis?

No. The Ordinance requires that an employer perform a legitimate business reason analysis if the employer is making the decision solely based on the applicant's criminal history. However, if the decision is based in part on the applicant's criminal history, it's a good idea to analyze and document its decisions.

G. TYPES OF CRIMINAL HISTORY RECORDS

47. Does an applicant need to report a sealed or expunged record if the employer requests criminal history information?

Seattle's Jobs Assistance Ordinance does not address conviction records that have been the subject of an expungement, vacation of conviction, sealing of the court file, pardon, annulment or other equivalent procedure. Washington State laws do address vacated and sealed records and what an employee needs to report. For more information on the laws addressing vacated or sealed records contact the ACLU Second Chances Program at http://aclu-wa.org/secondchances.

48. What about the conduct that led to an arrest and conviction that was later sealed or expunged? Can an employer ask about that?

Yes. If an employer wants to consider the conduct related to any arrest, the employer has to follow the process outlined in the Ordinance. The employer may not consider the conduct related to the arrest until after the initial screening.

49. Does the Ordinance apply to juvenile records?

Yes, the Ordinance applies to juvenile records.

H. HOW THE ORDINANCE IS ENFORCED

50. Who enforces the Ordinance?

The Seattle Office for Civil Rights (SOCR), a department of 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 ocr_criminalrecordsquestions@seattle.gov.

51. What should an applicant do if s/he sees an application that asks about prior arrests and convictions?

The Seattle Office for Civil Rights is working with employers to ensure they are aware of the law. Anyone who encounters an application that does not follow the law should let the employer know about the law or contact SOCR at 206-684-4500. Please remember that law enforcement jobs and positions that work with children and vulnerable adults are exempt from the law.

52. Once the Ordinance takes effect, how are violations reported?

Anyone who feels that an employer has violated the Ordinance should contact SOCR at 206-684-4500. Our services are free and impartial, and language and disability accommodations are available upon request.

53. What happens if an employer violates this Ordinance?

SOCR can investigate complaints relating to violations of the Ordinance. If an employer is found to have violated the Ordinance for the first time, 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 $1,000 paid to the applicant or employee who brought the charge forward.

54. What is SOCR's role in enforcing the Ordinance?

SOCR ensures compliance by playing a neutral role during the filing, investigation, and resolution of claims. SOCR conducts fair and impartial investigations; SOCR does not provide legal advice or representation to employees or employers.

55. Does SOCR respond to anonymous reports of violations of the Ordinance?

In order to move forward with a charge, SOCR must have verifiable information about a specific violation prior to initiating an investigation. It is unlikely that an anonymous tip alone would be enough for SOCR to move forward with an investigation.

56. Can an individual file a charge anonymously?

Generally, individuals cannot file charges anonymously. Any investigation conducted by SOCR looks into details involving specific situations – for example, an applicant who was passed over for a job because of past criminal history or an employee who was demoted because of a pending criminal charge. To conduct a thorough investigation, SOCR needs to be able to identify the charging party in order to interview witnesses and gather documents that relate to the case.

57. Can SOCR file a charge on its own?

Yes. SOCR's Director can file a charge for violations that do not specify individuals. For example, if an employer's advertisement or application clearly violates the Ordinance, SOCR can file a Director's Charge and conduct an investigation.

58. What happens if an employer retaliates against an employee or job applicant for filing a charge?

Retaliation is illegal. Employers are prohibited from taking an adverse action or discriminating against employees who assert their rights in good faith under the Ordinance. These rights include filing a complaint about alleged violations; participating in an investigation; and opposing any policy, practice or act that the Ordinance prohibits.

59. How does an investigation work?

For more information on how an SOCR investigation works visit http://www.seattle.gov/civilrights/howtoocr.htm.

60. If an employer violates this Ordinance can a person file a private lawsuit?

No. The Ordinance does not create a private civil right of action.

61. What options are available to the parties to resolve the complaint?

Parties will be provided with a range of options for resolving their concerns. This can include asking SOCR to provide assistance to the employer, mediate a resolution, or investigate a potential violation of the Ordinance.

62. Are employers required to file regular reports with the City of Seattle documenting the number of employees that have criminal histories?

No. The Ordinance does not require employers to report data, except as part of an investigation.