



SEATTLE ALLOWS EMPLOYERS TO CONDUCT CRIMINAL BACKGROUND CHECKS AFTER AN INITIAL SCREENING

By: Laura Randazzo, Vice President of Compliance, Aurico

The Seattle City Council has voted unanimously to prohibit employers from inquiring about an applicant's criminal record or excluding from consideration for employment until after an initial screening. Council Bill 117796 will take effect on November 1, 2013, if as expected, Seattle Mayor Mike McGinn (D) signs the measure.

Coverage: The bill would be effective for employers with one or more employees, and job placement, referral, and employment agencies. It would apply to all advertisements for positions, employment applications, and any employment policy or practice.

Excluded employers from this bill are as follows:

- An individual whose job or prospective job duties include law enforcement, policing, crime prevention, security, criminal justice, or private investigative 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

What is Permitted: The bill is similar to the recommendations of the EEOC criminal guidance and does allow employers to ask about an applicant's criminal or arrest record after an initial screening to eliminate unqualified applicants.

Employers may perform a criminal background check on a job applicant or require a job applicant to provide criminal history information, but only after the employer has completed an initial screening of applications or resumes eliminating unqualified applicants. The Bill suggests that an employer perform a criminal background check on final candidates only.

Arrest Records: Employers may inquire about the conduct related to an arrest, but will, be prohibited from taking any "tangible adverse employment action" based solely on an arrest record, unless the employer has a legitimate business reason(s) for taking such action. A "tangible adverse employment action" means "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."

Convictions and pending convictions: Employers cannot take an adverse employment action solely based on an employee or applicant's conviction or pending conviction record unless the employer has a legitimate business reason for taking such action. A legitimate business reason is defined as:

- 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 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.

Correction Period: Before taking a tangible adverse employment action, the employer shall: identify the record(s) or information they are relying on, give the applicant or employee a reasonable opportunity, hold position open for two business days to explain or correct that information, in addition employers may but are not required to hold open a position beyond that to resolve questions or issues about an individual's criminal conviction record.

Remedies: This bill does not create a private cause of action. The exclusive remedy for a violation for these requirements is a notice of infraction and offer assistance from the Seattle Office of Civil Rights (SOCR) for first violation, a monetary penalty capped at \$750.00 for the second offense and a monetary penalty capped at \$1,000 for a subsequent offense.



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-R.R. Santa Barbara, CA

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Why are applicant's valid, legible, signature so Important?

Fair Credit Reporting Act, 619. Obtaining information under false pretenses [15 U.S.C. § 1681q]

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, United States Code, imprisoned for not more than 2 years, or both.

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Hiring a New Employee? Don't Forget Form I-9

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Form I-9, created to establish eligibility for employment and verify identification of all workers in the United States, was launched November 6, 1986. Employers, regardless of size or type must have a completed I-9 on file for all employees hired after that date. In addition to having the form completed, it must be completed correctly – this is one form where scribbles and white out won't suffice. See below for a few basic tips:

1. The employer CANNOT specify which documents are used for the form. Employees are able to choose from the Lists of Acceptable Documents on page 9 of the form.
2. Employers must use the current edition of Form I-9 when hiring new employees – no previous editions will be accepted. The current edition date is 03/08/13, and can be found at: <http://www.uscis.gov/files/form/i-9.pdf>.
3. Section 1 of the I-9 may not be completed by a new employee prior to acceptance of a job offer, but must be completed no later than the first day of employment.
4. Section 2 must be completed by employers or their authorized representatives within 3 business days of the employee's first day of employment. In order to accomplish this, employers or their authorized representatives must examine evidence of employment authorization and identity. This must be done in person, and with original documents of the employee's choice, per the lists on the last page of Form I-9.
5. Section 3 of the form should be used when an employer is either re-verifying that an employee is authorized to work, or rehiring an employee within 3 years from the date the original I-9 was completed. For more details on re-verification and when it is appropriate, see page 5 of Form I-9.

Employers are frequently concerned about their responsibility in examining the documents presented to them for verification. Rest assured – according to the Handbook for Employers (M-274) developed by the U.S Citizenship and Immigration Services, if documents “reasonably appear on their face to be genuine and to relate to the person presenting them, you must accept them.” The Handbook for Employers is a great resource for other questions and concerns employers or authorized representatives may have regarding the I-9, particularly if unfamiliar with the form. It can be found at: <http://www.uscis.gov/files/form/m-274.pdf>.

Additional information can be found at www.uscis.gov, as well as in the Handbook for Employers, regarding how long and in what manner I-9 forms must be retained and stored. Protect your business, and learn about Form I-9 today.

(Information for this article was obtained from www.uscis.gov).

This article is intended as information, and is not a substitute for legal or other professional advice.

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