

JOB ASSISTANCE ORDINANCE

SMC 14.17 • Use of Criminal Records in Employment Decisions



Fairness.



Opportunity.



A Second Chance.

OPPORTUNITY works for SEATTLE

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□ **This Issue Impacts Us All**

- ▣ Incarceration rate has tripled since 1980 and is 7x the historic average.
- ▣ 1 in 4 adults has a criminal record.

□ **Racial Disparities**

- ▣ African Americans are 3.8% of state population but are 19% of state's prison population.
- ▣ Native Americans are 1.8% of state population but are 4.3% of the state's prison population.
- ▣ Blanket exclusions from employment based on criminal history have a disparate impact on communities of color.

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- **Awareness Project: We are all criminals**
 - ▣ What about the 75% that does not have a criminal record?
 - ▣ What about the ones that got away?
 - ▣ How would their lives have been different if they been caught?
 - ▣ Minnesota - <http://www.weareallcriminals.com/>

OPPORTUNITY works for SEATTLE

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- **Fairness, Opportunity, Second Chance**
 - ▣ Employment is a key factor in reducing recidivism.
 - ▣ Increased employment opportunities will strengthen our community
 - Increase employment opportunity
 - Reduce recidivism
 - Reduce racial disparities
 - Improve public safety

Job Assistance Ordinance (JAO)

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- SMC 14.17
- Effective November 1, 2013
- Sets limits on use of criminal history records in employment decisions for jobs in Seattle
 - ▣ Employers may still conduct background checks
 - ▣ Ordinance effects timing and requires follow-up

Coverage

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□ **Employers**

- City of Seattle
- Private employers with one or more employees
- Location of employer does not matter

□ **Applicants and Employees**

- People who perform substantial part of services in Seattle
- Substantial = at least 50%

Exceptions

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- Federal, state or other local government employers
- Law enforcement
- Policing
- Crime prevention
- Security
- Criminal justice
- Private investigation services
- **Unsupervised Access**
 - Children under sixteen years of age
 - People with developmental disabilities
 - Vulnerable adults

Unsupervised Access

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- **Unsupervised access ≠ incidental contact.**

- **Incidental contact**
 - Minor or casual contact in an area that is within visual or auditory range of others and includes passing a person while walking down a hallway.

 - Does not include being alone for any period of time in a location that is not within the visual or auditory range of others. See RCW 43.43.830.

REQUIREMENTS



Job Ads

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- Prohibits categorical exclusions in job ads
 - “Felons need not apply”
 - “No criminal background”

 - ? “Must pass background check”
 - ? “Must successfully clear background check”

Questions & Background Checks

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- Delays criminal history inquiries **until after** an initial screening to eliminate unqualified applicants
 - Review of applicant's skills & experience
 - Determination that applicant meets minimum job qualifications

Arrests

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- Prohibits adverse action based solely on arrest record
 - ▣ Adverse Action = denial of job, termination, etc.
 - ▣ Arrest is not proof of unlawful conduct

Conduct relating to arrest, Pending criminal charge & Convictions

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- ❑ Pre-Adverse Action
 - ❑ Requires **reasonable opportunity** to explain or correct criminal history information before employer takes an adverse action based solely on criminal record
 - ❑ Requires a **legitimate business reason** if employer decides to take an adverse action based solely on criminal record

Reasonable Opportunity

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- ❑ Provide notice of potential adverse action
- ❑ Identify information & records that led to decision
- ❑ Hold job open for 2 business days
- ❑ Consider explanation, corrections and verifiable information of good conduct & rehabilitation
 - ❑ Written or oral statement from applicant or employee, parole or probation officer, clergy member, social worker, etc.
 - ❑ Certificate of rehabilitation, completion or enrollment in an educational or vocational training program, etc.

Legitimate Business Reason

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- Employer believes in good faith that nature of criminal conduct 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

Legitimate Business Reason

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- Employer has considered the following factors:
 - Seriousness of crime
 - Number and types of convictions or pending charges;
 - Time that has elapsed since conviction or pending charges, excluding periods of incarceration;
 - Verifiable information re: good conduct & rehab;
 - Specific duties and responsibilities of the position; and
 - Place and manner in which the position will be performed.

ENFORCEMENT



Seattle Office for Civil Rights

▣ **ADVANCE OPPORTUNITY. ACHIEVE EQUITY.**

- ▣ Enforce laws regarding discrimination, paid sick & safe time, and the use of criminal records in employment
- ▣ Support employer compliance
- ▣ Provide policy recommendations & outreach
- ▣ Coordinate Race & Social Justice Initiative
- ▣ Coordinate Task Force on Gender Pay Equity



Support for Employers

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□ TECHNICAL ASSISTANCE

- 206-684-4500
- ocr_criminalrecordsquestions@seattle.gov
- Questions & Group Presentations

□ WEB SITE

- <http://www.seattle.gov/civilrights/criminalrecords.htm>
- Administrative Rules, Chapter 80
- FAQs, brochures, posters, etc.

Employee Complaints

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- **GOAL = COMPLIANCE**
 - **First Violation**
 - Notice of Infraction & Technical Assistance
 - **Second Violation**
 - Penalty up to \$750
 - **Subsequent Violation**
 - Penalty up to \$1000
 - **Hearing Examiner**
 - Penalties plus attorney fees

- **SETTLEMENT = ALWAYS AN OPTION**

Tips

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- **Before Charge...best practices**
 - Document, document, document
 - Create job descriptions with minimum & desired qualifications
 - Contact SOCR for technical assistance
 - Request employer extension

- **After Charge**
 - Consider early resolution and/or settlement
 - Provide detailed response and documentation
 - Call investigator for questions and updates

Contact Information

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- **Seattle Office for Civil Rights**

810 Third Avenue South, Suite 750

Seattle, WA 98104

206-684-4500

<http://www.seattle.gov/civilrights/>

- **Karina Bull, Business Liaison**

206-684-4536

karina.bull@seattle.gov

QUESTIONS?





Talent Wins: A Proven Process for Selecting Winners

Presented by:

Jenifer Lambert

TERRA Staffing Group

November 22, 2013

10:00-11:00am

This activity has been approved for HRCI credit.

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