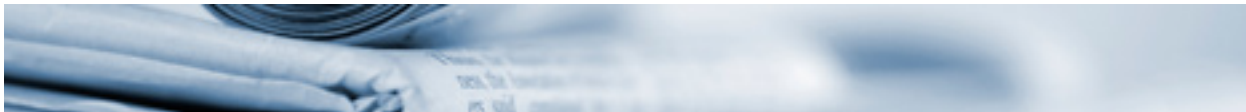


Client Update: Ready for the November 1st New Job Assistance Ordinance in Seattle? Here's a Checklist for Criminal Background Check Compliance for the Hiring Process



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November 1, 2013 marks the start of new restrictions on Seattle employers' use of criminal background checks for employment purposes. The Job Assistance Ordinance forbids employers from requiring job applicants to disclose arrest and/or conviction records as a part of initial job applications, and restricts how employers may use criminal arrest and conviction records that are disclosed. Below are a few suggestions to ensure that your workplace's applications and hiring procedures comply with the new law.

Seattle Criminal Background Check Compliance Checklist

- ✓ Determine which employees or positions fall under the Job Assistance Ordinance. If you have employees who work in Seattle as well as outside of Seattle, only those employees or positions who work 50% or more of their time in Seattle are subject to the new law.
- ✓ Determine if any job positions are excluded under the Job Assistance Ordinance. The new law does not apply to law enforcement, policing, crime prevention, security, criminal justice, private investigation and positions which involve unsupervised access to children younger than 16, vulnerable adults or developmentally disabled persons.
- ✓ For those positions to which the Job Assistance Ordinance applies, remove the question "Have you ever been arrested or convicted of a crime?" and similar inquiries on job applications. The Job Assistance Ordinance prohibits employers from seeking information about an applicant's arrest and/or conviction record — including both check boxes and space for narrative explanations — before the employer has completed an initial screening of applications to eliminate unqualified applicants.
- ✓ Edit your job postings and advertisements to remove the phrase "felons need not apply" and similar exclusionary language. The Job Assistance Ordinance forbids employers from categorically excluding individuals with arrest or conviction records from consideration. An employer may, however, advertise and inform employees and applicants that, after initial screening, the employer will conduct a criminal background check.
- ✓ Only after completing an initial screening to eliminate unqualified applicants, or making a conditional offer of employment, may you then ask the applicant or employee about his or her criminal history, or run a background check.
- ✓ Consider if there are legitimate business reasons to exclude applicants or employees with certain criminal records from particular positions or from employment generally.

“Legitimate business reason” is defined by the Job Assistance Ordinance as a good faith belief that the nature of the criminal conduct will either: negatively impact the applicant's or employee's fitness to perform the position sought or held; or harm or injure people, property, business reputation or business assets, and you have considered the conviction(s) or pending criminal charge(s) in light of several factors. These factors include:

- the seriousness of the conviction or charge;
 - the number and type of convictions or charges;
 - the amount of time elapsed since the conviction or charge;
 - verifiable rehabilitation or good conduct information regarding the applicant or employee;
 - the duties and responsibilities of the position; and
 - the place and manner in which the position is performed.
- ✓ Before rejecting an otherwise qualified applicant or employee based on criminal history, you must inform the applicant or employee of the criminal history information upon which you base the rejection, and give the applicant or employee an opportunity to explain or correct that information. After supplying this notice, you must hold the position open for **at least two business days** to allow the applicant or employee to explain or correct the criminal history information.
 - ✓ Before rejecting an applicant or employee because a criminal history report reveals information that is inconsistent with information given to you by an employee or applicant, you must inform the employee or applicant of the criminal history information upon which you base the rejection, and give the employee or applicant at least two business days to correct any errors in the criminal history report. This opportunity to correct errors in the criminal history report is not available if the employee or applicant has intentionally misrepresented information to you.
 - ✓ Establish record-keeping procedures to memorialize your consideration of the above factors and the applicant's or employee's opportunity to explain the conviction or charge, or correct the record.
 - ✓ **Ask for an extension of time** if you need more time to make changes to your recruiting systems and forms in order to comply with the Job Assistance Ordinance. Upon the written request of an employer, the director of the Seattle Office of Civil Rights (SOCR) has the authority to extend the implementation date of the Job Assistance Ordinance for a reasonable amount of time, in order to allow an employer to make necessary changes to its systems and forms. So if you need more time, ask for it.

The SOCR is charged with enforcing the new law, and may enforce violations with or without an applicant's or employee's complaint. Background information on the passage of the Job Assistance Ordinance is available [here](#). The full text of the Job Assistance Ordinance is [here](#) and the Seattle Office for Civil Rights' Frequently Asked Questions are [here](#).

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