



CRIMINAL HISTORY DISCRIMINATION FAQ FOR EMPLOYERS

Chicago has amended its Human Rights Ordinance to address employment discrimination based on criminal history. Essentially, the new City law prohibits employers with fewer than 15 employees from inquiring about an applicant's criminal history until a specific point in the hiring process. The amendments apply to actions taken on or after January 1, 2015. A similar new state law that applies to employers of 15 or more employers also goes into effect on that date; this FAQ covers only the new City law, not the state law. However, one provision of the new City law, described in question 10 below, applies to all employers, regardless of size.

1. What do I need to do before January 1, 2015 to comply with the new City law?

Before January 1, 2015, you should review your employment application process and related materials to make sure that you do not request permission to obtain, inquire into, or consider an applicant's criminal history at the start of the application process.

2. Does this mean I can no longer base my decision to turn down an applicant on his criminal conviction?

No. The new City law does not impact your ability to turn down applicants on the basis of criminal convictions. However, you should be aware that other laws may impact how much weight you can give to an applicant's criminal history in making your hiring decision.

4. Does the new City law in any way interfere with the state and federal laws that exclude individuals with specific types of convictions from being hired for certain positions?

No. If federal or state law prohibits an employer from hiring an individual who has been convicted of a particular crime to fill a specific position, the employer remains obligated to follow federal or state law.

5. Does the new City law prohibit me from telling applicants in advance, such as in a job announcement, that convictions for certain offenses will disqualify them from a specific position?

The new City law provides that an employer may provide advance written notice about disqualifying convictions in three circumstances: first, if the opening is for a position where conviction of one or more specified criminal offenses automatically disqualifies an applicant under state or federal law; second, if the open position requires a bond, and an applicant's conviction of one or more specified criminal offenses would disqualify the applicant from obtaining the required bond; and, third, if the open position requires a license under the Emergency Medical Services (EMS) Systems Act, 210 ILCS 50/1. For additional scenarios, we recommend seeking legal counsel for guidance in maintaining compliance with existing state law, as well as federal law and EEOC guidelines.

6. Does the new City law allow me to conduct criminal background checks on prospective employees?

Yes. It remains permissible to conduct a criminal background check before making a hiring decision. However, you may not inquire into or consider an applicant's criminal background until after you deem the

applicant qualified and notify the applicant that he/she has been selected for an interview.

7. Does the new City law require me to wait to conduct a criminal background check even if I don't conduct interviews as part of the hiring process?

Yes. For positions that do not require an interview, you may conduct a criminal background check only after extending a conditional offer of employment to the applicant.

8. If, due to the particular requirements of the open position, I am legally required to secure a potential employee's permission before conducting a criminal background check, does the new City law allow me to seek that permission at the time he fills out an application?

No. You must wait to request permission from the applicant to run the background check until you notify the applicant that he has been selected for an interview or, if you don't conduct interviews, until you extend a conditional offer of employment.

9. Does the new City law prohibit me from telling applicants in advance that I may run a background check on them?

No. The City law does not prohibit you from disclosing in advance that you may run a background check on applicants.

10. If I contact an applicant to inform him that he was not selected for employment, and my decision not to hire the applicant was based, in whole or in part, on the results of his criminal background check, does the new City law require me to inform the applicant of this?

Yes. If you inform the applicant that he was not selected for employment, you must also inform the applicant that the results of his criminal background check were the reason, or one of the reasons, for your decision. *This aspect of the new City law applies to all employers, regardless of number of employees.*

11. Who is going to enforce the new City law?

The Chicago Commission on Human Relations (CCHR) is charged with enforcing this law.

12. What are the penalties for violating the new City law?

Any employer who violates any of the provisions of the new law may be fined not less than \$100 and not more than \$1,000 for each offense. Additionally, violations of the law may result in business license discipline for the employer in question.

For more information, call the Chicago Commission on Human Relations at 312-744-5620, or for other informative materials, go to: www.cityofchicago.org/humanrelations