

ORDINANCE NO. 20160324-019

AN ORDINANCE ESTABLISHING FAIR CHANCE HIRING STANDARDS IN THE CITY, CREATING A CIVIL PENALTY, AND CREATING AN OFFENSE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

Part 1. Title 4 of the City Code is amended by adding a new Chapter 4-15 to read:

CHAPTER 4-15. FAIR CHANCE HIRING.

§4-15-1 FINDINGS.

- (A) The council finds that denying an employment opportunity to an otherwise qualified person based on the person's criminal history that is not relevant to the job under consideration:
- (1) is unjust;
 - (2) is detrimental to the health, safety, and welfare of the residents of the City;
 - (3) prevents the reintegration of the person into the community;
 - (4) creates a burden on public resources and law enforcement;
 - (5) contributes to crime and recidivism; and
 - (6) contributes to unemployment and harms the local economy.
- (B) The council further finds that it is within the police power and the responsibility of the City to remedy the problems enumerated in subsection (A).

§4-15-2 DEFINITIONS.

In this chapter:

- (A) **ADVERSE ACTION** means a refusal to hire, a refusal to promote, or the revocation of an offer of employment or promotion.
- (B) **APPLICATION** means a written or oral expression of interest in a job by an individual made in compliance with the employer's established criteria for receiving expressions of interest.
- (C) **CONDITIONAL EMPLOYMENT OFFER** means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's evaluation of the individual's criminal history, and may be conditioned on any pre-employment medical examinations authorized under the Americans with Disabilities Act (ADA).
- (D) **CRIMINAL HISTORY** means an arrest, conviction, plea of nolo contendere, or deferred adjudication arising from a felony criminal accusation, or a Class A or Class B misdemeanor criminal accusation, made under state law, federal law, or a comparable law of another state of the United States.
- (E) **EMPLOYMENT** means to work for an employer for pay. The term includes full time work, part time work, temporary or seasonal work, contract work, casual or contingent work, work through the services of a temporary or other employment agency, and participation in a vocational, apprenticeship, or educational training program.
- (F) **EMPLOYER** means a person, company, corporation, firm, labor organization, or association that employs at least fifteen individuals whose primary work location is in the City for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The term includes an agency acting on behalf of an employer. The term does not include:
- (1) the United States;
 - (2) a corporation wholly owned by the government of the United States;
 - (3) a bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Code;
 - (4) the state or a state agency; or

- (5) a political subdivision of the state.
- (G) **INDIVIDUALIZED ASSESSMENT** means an evaluation of the criminal history of an individual that includes, at a minimum, the following factors:
 - (1) the nature and gravity of any offenses in the individual's criminal history;
 - (2) the length of time since the offense and completion of the sentence; and
 - (3) the nature and duties of the job for which the individual has applied.
- (H) **JOB** means an employment position with an employer for which the employer has solicited or accepted applications and which the employer is currently attempting to fill.
- (I) **STAFFING AGENCY** means an employer that:
 - (1) assigns individuals employed by it to perform work for another employer; and
 - (2) retains the obligation to pay such individuals for the work performed for the other employer.
- (J) **STAFFING POOL** means a list of individuals retained by a staffing agency before the assignment of a specific job to perform for another employer.

§4-15-3. APPLICABILITY.

- (A) This chapter applies to an employer.
- (B) This chapter does not apply to a job for which a federal, state, or local law, or compliance with legally mandated insurance or bond requirement disqualifies an individual based on criminal history.
- (C) Nothing in this chapter limits an employer's authority to withdraw a conditional offer of employment for any lawful reason, including the determination that an individual is unsuitable for the job based on an individualized assessment of the individual's criminal history.

§4-15-4. FAIR CHANCE HIRING PRACTICES.

- (A) An employer may not publish or cause to be published information about a job covered by this chapter that states or implies that an individual's criminal history automatically disqualifies the individual from consideration for the job.
- (B) An employer may not solicit or otherwise inquire about the criminal history of an individual in an application for a job covered by this chapter.
- (C) An employer may not solicit criminal history information about an individual or consider an individual's criminal history unless the employer has first made a conditional employment offer to the individual. This does not preclude an employer from explaining to applicants, in writing, the individualized assessment system that the employer uses to consider criminal history.
- (D) An employer may not refuse to consider employing an individual in a job covered by this chapter because the individual did not provide criminal history information before the individual received a conditional employment offer.
- (E) An employer may not take adverse action against an individual because of the individual's criminal history unless the employer has determined that the individual is unsuitable for the job based on an individualized assessment conducted by the employer.
- (F) An employer who takes adverse action against an individual based on the individual's criminal history must inform the individual in writing that the adverse action was based on the individual's criminal history.
- (G) Notwithstanding any other part of this chapter, a staffing agency may solicit criminal history information about an individual and make an individualized assessment of an individual's criminal history when the staffing agency has identified a job to which the individual will be employed or placed in a staffing pool.

§4-15-5 RETALIATION PROHIBITED.

An employer may not take adverse action against an individual because the individual has reported a violation of this chapter by an employer, or has participated in an administrative proceeding under this chapter.

§4-15-6 ADMINISTRATION.

- (A) The Equal Employment/Fair Housing Office shall:
 - (1) educate employers and residents about this chapter;
 - (2) receive and investigate complaints, including anonymous complaints, alleging a violation of this chapter;
 - (3) enforce this chapter;
 - (4) seek voluntary compliance with this chapter before assessing a civil penalty; and
 - (5) adopt rules necessary to implement this chapter.
- (B) To be considered by the Equal Employment/Fair Housing Office, a complaint alleging a violation of this chapter must be filed with the Equal Employment/Fair Housing Office no later than the 90th calendar day after the individual receives knowledge of the alleged violation, but in no event later than one year from the date of the alleged violation.
- (C) If the Equal Employment/Fair Housing Office finds that a violation of this ordinance has occurred, and voluntary compliance cannot be obtained, the Equal Employment/Fair Housing Office may assess a civil penalty and provide notice to the employer as provided in §4-15-8.

§4-15-7 INVESTIGATION OF COMPLAINTS.

- (A) The director of the Equal Employment/Fair Housing Office may subpoena records or testimony relevant to the investigation of a complaint under this chapter. A subpoena shall:
 - (1) be directed to a person with knowledge or information relevant to a complaint under this chapter, or to a custodian of records relevant to a complaint under this chapter;

- (2) be in writing and signed by the director of the Equal Employment/Fair Housing Office;
 - (3) identify the records or testimony to be produced under the subpoena;
 - (4) direct the person to whom it is issued to produce the records or provide the testimony identified in the subpoena at a specific place and time, which shall be not earlier than the 10th business day from the date of service of the subpoena;
 - (5) identify the individual complaint made under this chapter to which the subpoena relates;
 - (6) state that the subpoena is issued under the authority of this chapter for purposes of investigating a complaint under this chapter;
 - (7) state that failure to comply with the subpoena is an offense and punishable as a Class C misdemeanor under this Code; and
 - (8) be served on the person to whom it is directed by certified mail or personal delivery.
- (B) A person commits an offense if the person fails to comply with a subpoena issued and served on the person as provided in subsection (A). The offense is punishable as a Class C misdemeanor as provided in section 1-1-99 of this Code. A culpable mental state is not a necessary element of the offense, or required to be proven for the offense.

§4-15-8 CIVIL PENALTY.

- (A) An employer who fails to cease a violation of this chapter by the end of the 10th business day after the day the employer receives written notice of the violation from the City is liable to the City for a civil penalty of up to \$500 for that violation. For a first-time violation, the City may instead issue a warning if the employer attends an appropriate training session about compliance with this chapter.
- (B) An employer who violates Section 4-15-4(A) or Section 4-15-4(B) of this chapter is liable for no more than one civil penalty for each job to which the violation relates.

(C) This section does not create a criminal offense.

Part 2. The Equal Employment/Fair Housing Office may not assess a civil penalty under section 4-15-8 for a violation of Chapter 4-15 that occurs before the first anniversary of the effective date of this ordinance.

Part 3. For a violation of Chapter 4-15 that occurs after the effective date of this ordinance but before the first anniversary of the effective date of this ordinance, the Equal Employment/Fair Housing Office shall issue a written warning to the employer found to be in violation informing the employer that a civil penalty may be assessed for a violation that occurs after the first anniversary of the effective date of this ordinance.

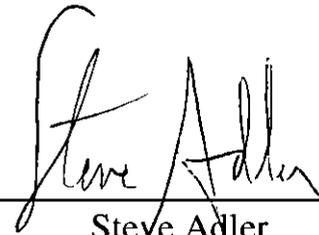
Part 4. The council directs the city manager to design and provide a public education campaign to inform employers and residents of the requirements of Chapter 4-15, including a website with best practices for employers.

Part 5. Except as provided in Part 2, this ordinance takes effect on April 4, 2016.

PASSED AND APPROVED

March 24, 2016

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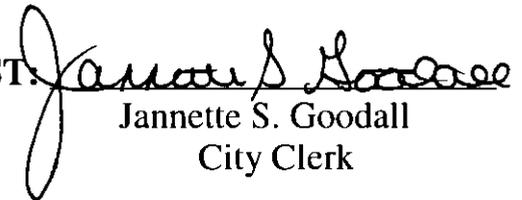
Steve Adler
Mayor

APPROVED:



Anne L. Morgan
City Attorney

ATTEST:



Jannette S. Goodall
City Clerk