

Ater Wynne Employment Law Alert

Seattle City Council Restricts Criminal Background Checks

Kathy L. Feldman

Partner, Ater Wynne LLP

On November 1, 2013 a new Seattle ordinance will severely restrict when and how a private employer may ask about and use the criminal conviction history of its job applicants and employees. The new law applies to all employees who spend at least 50% of their time in Seattle. Under the law, employers will no longer be able to ask about a job applicant's criminal history at the initial application stage. Nor can an employer's job advertisements or postings automatically or categorically exclude individuals with any arrest or conviction records.

The ordinance allows employers to perform a criminal background check on a job applicant or require a job applicant to provide criminal history information only after the employer has completed an initial screening of applications or resumes to eliminate unqualified applicants. Before taking any adverse employment action based on an applicant's criminal history, an employer must identify the source of the criminal records and give the applicant a reasonable opportunity to explain or correct the information. Employers must hold a conditional job offer open for two business days to allow an applicant time to respond, correct, or explain the information.

The ordinance allows employers to inquire about conduct related to an arrest. Employers may not take an adverse employment action based on an employee's or applicant's arrest record unless the employer has a legitimate business reason. The ordinance defines "legitimate business reason" as an employer's good-faith belief that the nature of the criminal conduct underlying the charge or conviction will either have a negative impact on the employee's or applicant's fitness or ability to perform the position or will harm people, property, or the business reputation or business assets of the employer. Employers must consider factors such as: the seriousness of the underlying

criminal conviction or pending criminal charge, the number and types of convictions or pending criminal charges, the time elapsed since the conviction or charge, rehabilitation and good conduct, the duties and responsibilities of the position, and the place and manner in which the position will be performed.

The ordinance does not create a private right of action for an applicant to sue a prospective employer if the applicant is not hired for the position. Violation of the ordinance may subject employers to monetary penalties of up to \$750 to \$1,000, depending on the number of violations, and payment of the City's attorney's fees.

Employers need to review their job application forms and remove questions about criminal history. Job postings should also be reviewed to eliminate any language such as "felons need not apply." Background checks are still useful, but employers need to be wary of how they are used.

[Kathy L. Feldman](#) has focused on employment law since 1985, developing expertise in diverse employment issues ranging from negotiating employment agreements to the defense of employment discrimination, wrongful termination, and breach of contract litigation.



This announcement has been prepared for clients and friends of Ater Wynne LLP and should not be relied upon as legal advice

ATERWYNNELLP

ATTORNEYS AT LAW

PORTLAND SEATTLE MENLO PARK