

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

THE IOWA ASSOCIATION OF)	Law	<input type="checkbox"/>
BUSINESS AND INDUSTRY,)	Equity	<input checked="" type="checkbox"/> No. <u>EQCV139257</u>
Plaintiff,)	Date Petition Filed:	1/2/20
v.)		
THE CITY OF WATERLOO, THE)		Original Notice
WATERLOO COMMISSION ON)		
HUMAN RIGHTS and MARTIN M.)		
PETERSON, in his official capacity,)		
Defendants.)		

TO THE ABOVE-NAMED DEFENDANTS:

You are notified that a petition has been filed in the office of the clerk of this court naming you as the defendants in this action. A copy of the petition (and any documents filed with it) is attached to this notice. The name and address of the attorney for the plaintiff is Ryan G. Koopmans, Belin McCormick, P.C., 666 Walnut Street, Suite 2000, Des Moines, Iowa 50309. The attorney’s phone number is (515) 283-4617; facsimile number (515) 558-0617.

You are further notified that the above case has been filed in a county that utilizes electronic filing. Unless, within 20 days after service of this original notice upon you, you serve, and within a reasonable time thereafter file a motion or answer, in the Iowa District Court for Black Hawk County, at the courthouse in Waterloo, Iowa, judgment by default will be rendered against you for the relief demanded in the petition. Please see Iowa Court Rules Chapter 16 for information on electronic filing and Iowa Court Rules Chapter 16, division VI regarding the protection of personal information in court filings.

If you need assistance to participate in court due to a disability, contact the disability coordinator at: (563) 589-4433. Persons who are hearing or speech impaired may call Relay Iowa TTY (1-800-735-2942). **Disability coordinators cannot provide legal advice.**

(SEAL)

Black Hawk County Clerk of Court
Black Hawk County Courthouse
Waterloo, Iowa 50703

STATE OF IOWA JUDICIARY

Case No. EQCV139257

County BlackHawk

Case Title IA ASS OF BUSINESS & IND VS CITY OF WATERLOO ET AL

THIS CASE HAS BEEN FILED IN A COUNTY THAT USES ELECTRONIC FILING.

Therefore, unless the attached Petition and Original Notice contains a hearing date for your appearance, or unless you obtain an exemption from the court, you must file your Appearance and Answer electronically.

You must register through the Iowa Judicial Branch website at <http://www.iowacourts.state.ia.us/Efile> and obtain a log in and password for the purposes of filing and viewing documents on your case and of receiving service and notices from the court.

FOR GENERAL RULES AND INFORMATION ON ELECTRONIC FILING, REFER TO THE IOWA COURT RULES CHAPTER 16 PERTAINING TO THE USE OF THE ELECTRONIC DOCUMENT MANAGEMENT SYSTEM:

<http://www.iowacourts.state.ia.us/Efile>

FOR COURT RULES ON PROTECTION OF PERSONAL PRIVACY IN COURT FILINGS, REFER TO DIVISION VI OF IOWA COURT RULES CHAPTER 16: <http://www.iowacourts.state.ia.us/Efile>

Scheduled Hearing:

If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (319) 833-3332 . (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)

Date Issued 01/03/2020 08:16:40 AM



District Clerk of BlackHawk

County

/s/ Lisa Barfels

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

THE IOWA ASSOCIATION OF BUSINESS AND INDUSTRY,)	Case No. <u>EQCV139257</u>
)	
Plaintiff,)	
)	Petition for Declaratory and Injunctive
v.)	Relief
)	
THE CITY OF WATERLOO, THE WATERLOO COMMISSION ON HUMAN RIGHTS and MARTIN M. PETERSON, in his official capacity,)	
)	
Defendants.)	

The Iowa Association of Business and Industry brings this action for declaratory and injunctive relief:

1. The Iowa Association of Business and Industry (ABI) is Iowa’s largest statewide business organization with more than 1,500 member companies representing 330,000 working Iowans, including thousands in Waterloo, Iowa.

2. The Waterloo Commission on Human Rights is an administrative agency within the City of Waterloo.

3. Martin M. Peterson is the Waterloo City Attorney. He is being sued in his official capacity.

4. Among other things, ABI represents its members at the Iowa Capitol by monitoring and advocating for policies and legislative proposals that will ensure Iowa sustains a business climate that fosters new jobs and economic growth.

5. In 2017, ABI registered and advocated for House File 295, which provides, among other things, that “a city shall not adopt, enforce, or otherwise administer an ordinance, motion, resolution, or amendment providing for any terms or conditions of employment that

exceed or conflict with the requirements of federal or state law relating to a minimum or living wage rate, any form of employment leave, hiring practices, employment benefits, scheduling practices, or other terms or conditions of employment.”

6. The Iowa House and Iowa Senate passed, and Governor Branstad signed, House File 295.

7. The language in paragraph 5 above, providing that “a city shall not adopt” any ordinance “providing any terms or conditions of employment that exceed or conflict with the requirements of federal or state law . . . relating to hiring practices . . . or other terms or conditions of employment” was codified at Iowa Code section 364.3(12)(a).

8. On November 5, 2019, the Waterloo City Council voted 4-3 to enact Ordinance No. 5522, which governs the hiring practices of Waterloo employers in a manner that exceeds or conflicts with federal and state law. Specifically, the ordinance governs when employers can inquire about an applicant’s criminal history and whether and how employers can consider an applicant’s criminal record when making hiring decisions.

9. On October 14, 2019, several weeks before the City Council enacted Ordinance No. 5522, ABI sent a letter to the City Council members, informing them that the ordinance violated Iowa Code section 364.3. The letter is attached as Exhibit A.

10. The three city council members who voted against the ordinance, Steve Schmitt, Bruce Jacobs, and Margaret Klein, expressed their agreement that the ordinance violates Iowa law, namely Iowa Code section 364.3(12)(a).

11. The ordinance violates Iowa Code section 364.3(12)(a), as it governs hiring practices and terms and conditions of employment in a manner that exceeds or conflicts with federal and state law.

12. Among other things, the ordinance states that it “shall be an unlawful discriminatory practice for an employer to include a criminal record inquiry on any application.”

13. The ordinance also makes it an illegal hiring practice for any employer to:

- i. “make any inquiry regarding, or to require any person to disclose or reveal, any convictions, arrests, or pending criminal charges during the application process, including but not limited to any interview“;
- ii. “make an adverse hiring decision based on any criminal records which have been lawfully erased or expunged, which are the subject of an executive pardon, or which were otherwise legally nullified”; or
- iii. “make an adverse hiring decision based on an applicant’s criminal record without a legitimate business reason.”

14. Ordinance No. 5522 states that its terms are to be enforced by the Waterloo Commission on Human rights and the Waterloo City Attorney.

15. The ordinance becomes effective July 1, 2020, but Waterloo employers will need to begin changing their hiring practices well before that date if they are to comply with the ordinance’s terms.

16. Understanding that reality, the City of Waterloo is already establishing training programs and providing additional information on Ordinance No. 5522 so that employers will be in compliance by July 1, 2020.

17. ABI has multiple members that do business in Waterloo and that would be required to change their hiring practices if Ordinance No. 5522 is not enjoined and declared to violate Iowa law.

THEREFORE, the Iowa Association of Business and Industry requests that the Court enjoin Defendants from enforcing Waterloo Ordinance No. 5522 and declare that the

ordinance violates Iowa Code section 364.3(12)(a) and Iowa Constitution article III, section 38A.

BELIN McCORMICK, P.C.

By: 

Ryan G. Koopmans

AT0009366

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ATTORNEYS FOR THE IOWA
ASSOCIATION OF BUSINESS AND
INDUSTRY.



Ryan G. Koopmans

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October 14, 2019

VIA E-MAIL

Waterloo City Council Members

Sharon Juon (sharon.juon@waterloo-ia.org)

Steven J. Schmitt (steve.schmitt@waterloo-ia.org)

Margaret Klein (margaret.klein@waterloo-ia.org)

Bruce Jacobs (bruce.jacobs@waterloo-ia.org)

Patrick Morrissey (pat.morrissey@waterloo-ia.org)

Jerome Amos Jr. (jerome.amos@waterloo-ia.org)

Ray Feuss (ray.feuss@waterloo-ia.org)

Re: *Criminal History Ordinance*

Dear Council Members:

I represent the Iowa Association of Business and Industry (ABI) in relation to the City's ordinance regulating the use of criminal history in hiring decisions.

ABI is Iowa's largest business organization, representing 1,500 companies across the state that, collectively, employ 333,000 Iowans, including thousands in Waterloo. Many—indeed, most—of these employers are struggling to find workers to fill vacant positions. With an unemployment rate at or near an all-time low for the last two years, and with the changing demand for workforce skills, ABI's interest is to encourage as many Iowans as possible to become fully employed.

To that end, ABI supports the City Council's focus on the underemployment of Iowans with criminal records. These Iowans have made mistakes, some of them serious, but have served their sentence and now want nothing more than to be productive members of society. ABI joins the Waterloo City Council, the Governor, and others who are looking for ways to help these Iowans and to encourage employers to give them a second chance. But the ordinance passed by the City Council on October 7 is not the answer, and we believe it may even harm the City Council's laudable goal.

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The ordinance, which expands state and federal discrimination laws by giving protected status to applicants with criminal records, is extremely broad (possibly one of the broadest in the country) and will create serious regulatory and practical hurdles for businesses that have chosen to locate in Waterloo. It goes well beyond the ban-the-box policies of many states and cities (a policy that, by itself, has been shown to actually *increase* discriminatory practices in employment¹), and will likely lead to fewer businesses locating or expanding in Waterloo.

The ordinance also violates Iowa law. In 2017, in response to a patchwork of county and municipal ordinances regulating employment policies, the legislature passed and the Governor signed a bill that forbids a city from adopting an ordinance that will “exceed or conflict with the requirements of . . . state law relating to . . . hiring practices.” Iowa Code Ann. § 364.3.

Iowa law, most notably the Iowa Civil Rights Act, places limitations on what employers cannot consider in making employment decisions. Waterloo’s new ordinance exceeds State requirements, adding a new protective class (applicants with criminal histories) and places additional limits on employers’ hiring practices. The criminal-history ordinance is therefore unenforceable and will likely lead to litigation costs for the City, its taxpayers, and employers.

We understand that the City Council is considering amendments to the ordinance. We instead ask that you repeal it in full and work with the Governor, the legislature, and stakeholders in finding ways to encourage and foster employment of rehabilitated Iowans. Continuing to implement and enforce this ordinance will only lead to unnecessary litigation costs and will distract (maybe even detract) from the City Council’s well-intentioned purpose.

ABI appreciates the City Council’s efforts to expand employment opportunities for all Iowans and welcomes further efforts in that regard.

¹ Agan, Amanda, and Sonja Starr. 2018. *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*. Quarterly Journal of Economics, 133., available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795795;

Doleac, Jennifer L., and Benjamin Hansen. 2018. *The unintended consequences of “ban the box”: Statistical discrimination and employment outcomes when criminal histories are hidden*. Working paper, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2812811.

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Sincerely,

A handwritten signature in black ink, appearing to read 'Ryan G. Koopmans', with a long horizontal flourish extending to the right.

Ryan G. Koopmans

RGK/lm

cc: The Honorable Quentin M. Hart
Martin M. Peterson
Mike Ralston
Nicole Crain