

5-3-15: UNFAIR USE OF CRIMINAL RECORD IN HIRING DECISIONS:

- A. Definitions: As used in this section, unless the context indicates otherwise, the following words and phrases shall have the meanings respectively ascribed to them in this subsection: ~~Except as defined in this subsection A, definitions of words and phrases set forth in 5-3-2 shall apply in this section.~~
1. ~~Adverse hiring decision: A refusal to hire an applicant or the revocation of a conditional offer of employment to an applicant.~~
 42. Applicant: Any person considered or who requests to be considered for employment by an employer.
 23. Arrest: The taking of a person into custody when and in the manner authorized by law or military authority due to an accusation or suspicion that the person committed a crime.
 34. Conviction: Any adjudication of guilt or sentence arising from a verdict or plea of guilty or no contest or the equivalent in relation to a crime, including a sentence of incarceration, a suspended sentence, a sentence of probation, a sentence of unconditional discharge, or a diversion program.
 45. Criminal record: Information regarding a conviction, arrest or pending criminal charge.
 56. Employer: Any person, partnership, company, corporation, labor organization or association which regularly employs ~~one (1)~~~~fifteen (15)~~ or more persons within the City of Waterloo, including the City of Waterloo, its departments, boards, commissions and agencies, ~~except the following: - Job placement and referral agencies and other employment agencies are not employers for purposes of this ordinance, except when hiring for their own internal needs, and private schools providing a regular course of instruction for any part of kindergarten through high school education are not employers for purposes of this ordinance. Neither~~(a) the United States or any of its political subdivisions, ~~(b) nor~~ the State of Iowa or any of its political subdivisions other than the City of Waterloo, ~~is an employer for purposes of this section. For clarity, public employers such as, but not limited to, Black Hawk County, the Waterloo Community School District, and Hawkeye Community College are political subdivisions of the State of Iowa and therefore exempt from this ordinance, and~~ (c) employers who are required by federal or state law or regulation to make an inquiry on an application or in an interview.
 67. Employment: Any occupation, vocation, job, work for pay or employment, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay.
 78. Inquiry: Any direct or indirect conduct intended to gather information, using any mode of communication, including but not limited to a box or blank that seeks to elicit information about an applicant's criminal record on an employment application form.
 89. Interview: Any direct contact by the employer with the applicant, whether in person or by telephone, to discuss the employment being sought or the applicant's qualifications.
 910. Legitimate business reason: A reason for which an employer may make an adverse hiring decision based on an applicant's criminal record, including the following:
 - a. Situations where the nature of the criminal conduct has a direct and substantial bearing on the fitness or ability to perform the duties or responsibilities of the intended employment, taking into consideration the following factors: the nature of the employment, the place and manner in which the employment will be performed, the nature and seriousness of the offense or conduct, whether the employment presents an opportunity for the commission of a similar offense or conduct, the length of time between the conviction or arrest and the application for employment (not including time on probation or parole or the time during which fines or other financial penalties or remedies may be outstanding), the number and types of convictions or pending charges, and any verifiable information provided by the applicant that is related to the applicant's rehabilitation or good conduct.
 - b. Situations where the granting of employment would involve unreasonable risk of substantial harm to property or to safety of individuals or the public, or to business reputation or business assets, taking into consideration the factors listed in paragraph a of this subsection A. 109.
 - c. Positions working with children, developmentally disabled persons and vulnerable adults where the applicant has a conviction record of a crime against children or disabled or vulnerable adults, including but not limited to crimes of rape, sexual abuse, incest,

prostitution, pimping, pandering, assault, domestic violence, kidnapping, financial exploitation, neglect, abandonment, and child endangerment.

- d. Situations where an employer must comply with any federal or state law or regulation pertaining to background checks and the criminal conduct is relevant to the applicant's fitness for the job.

~~4011.~~ Pending criminal charge: An existing accusation that a person has committed a crime, lodged by a prosecutor, law enforcement agency or military authority through an indictment, information, complaint or other formal charge, where the accusation has not yet resulted in a final judgment, acquittal, conviction, plea, dismissal or withdrawal.

- B. Prohibited Use of Criminal Record Information: In connection with the employment of any person, it shall be an unlawful discriminatory practice for an employer to **include a criminal record inquiry on any application. It shall further be an unlawful discriminatory practice for an employer who employs fifteen (15) or more persons, but not private schools providing a regular course of instruction for any part of kindergarten through high school education, to** engage in any of the following activity:

1. To 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. The application process shall begin when the applicant inquires about the employment being sought and shall end when an employer has extended a conditional offer of employment to the applicant. If the applicant voluntarily discloses any information regarding his or her criminal record at the interview, the employer may discuss the criminal record disclosed by the applicant.
2. To make an adverse hiring decision based solely on the applicant's record of arrests or pending criminal charges **that have not yet resulted in a conviction.**
3. To 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.
4. To make an adverse hiring decision based on an applicant's criminal record without a legitimate business reason.

- C. **Handling of Criminal RecordsNotifications:** Employers shall comply with any obligations arising under federal or state law relating to authorization for background checks, notifying applicants about adverse hiring decisions based on an applicant's criminal record, and any other matters involving the use of criminal record information.

- D. **Enforcement:** Any complaint alleging a violation of this section shall be filed within the time provided in 5-3-10. Upon certification by the commission of an affirmative finding of probable cause that an employer has committed a violation of this section, the commission shall refer the complaint and probable cause finding to the city attorney for review, together with a recommendation as to the amount of a fine to be assessed. Upon determination that the complaint meets the requisite standard of proof, the city attorney shall issue a municipal infraction citation against the employer. A first offense shall be subject to a fine of up to \$750.00, and a repeat offense within a period of three years shall be subject to a fine of up to \$1,000.00. Fines shall be payable to the complainant. For purposes of enforcing this section, the provisions of sections 5-3-10.D, 5-3-10.E, 5-3-10.F, 5-3-11, 5-3-12 and 5-3-13 shall not apply.

- ~~GE.~~ **Effect on Other Laws; No Private Rights:** This section shall not be interpreted or applied as imposing an obligation on the part of an employer to provide accommodations or job modifications in order to facilitate the employment of an applicant. **Nothing in this section shall be construed to create a private right of action to seek damages or other relief of any kind.**

- F. This section shall be effective July 1, 2020.

Amendments to Code of Ordinances § 5-3-15 (Unfair Use of Criminal Record in Hiring Decisions)

1. Add the following language at the end of subsection A: "Except as defined in this Subsection A, definitions of words and phrase set forth in 5-3-2 shall apply in this section."
2. Add a new definition as paragraph 1 of subsection A: "Adverse hiring decision: A refusal to hire an applicant or the withdrawal or revocation of a conditional offer of employment to an applicant."
3. Renumber all subsequent paragraphs of subsection A, after new paragraph 1.
4. In paragraph 6 (formerly paragraph 5) of subsection A, strike "fifteen (15)" and substitute "one (1)" in its place.
5. Strike paragraph 6 of subsection A and substitute the following: "Employer: Any person, partnership, company, corporation, labor organization or association which regularly employs one (1) or more persons within the City of Waterloo, including the City of Waterloo, its departments, boards, commissions and agencies, except the following: (a) the United States or any of its political subdivisions, (b) the State of Iowa or any of its political subdivisions other than the City of Waterloo, such as, but not limited to, Black Hawk County, the Waterloo Community School District, and Hawkeye Community College, and (c) employers who are required by federal or state law or regulation to make an inquiry on an application or in an interview."
6. In subparagraph b of paragraph 10 (formerly paragraph 9) of subsection A, strike "A.9" and substitute "A.10" in its place.
7. Change the first unnumbered paragraph of subsection B to read as follows (new language is underlined for identification purposes and will not be underlined in the ordinance): "In connection with the employment of any person, it shall be an unlawful discriminatory practice for an employer to include a criminal record inquiry on any application. It shall further be an unlawful discriminatory practice for an employer who employs fifteen (15) or more persons, but not private schools providing a regular course of instruction for any part of kindergarten through high school education, to engage in any of the following activity:"
8. Change paragraph 2 of subsection B to add the following language at the end: "that have not yet resulted in a conviction."
9. Add a new subsection C as follows: "Handling of Criminal Records: Employers shall comply with any obligations arising under federal or state law relating to authorization for background checks, notifying applicants about adverse hiring decisions based on an applicant's criminal record, and any other matters involving the use of criminal record information."
10. Add a new subsection D as follows: "Enforcement: Any complaint alleging a violation of this section shall be filed within the time provided in 5-3-10. Upon certification by the commission of an affirmative finding of probable cause that an employer has committed a violation of this section, the commission shall refer the complaint and probable cause finding to the city attorney for review, together with a recommendation as to the amount of a fine to be assessed. Upon determination that the complaint meets the requisite standard of proof, the city attorney shall issue a municipal infraction citation against the employer. A first offense shall be subject to a fine of up to \$750.00, and a repeat offense within a period of three years shall be subject to a fine of up to \$1,000.00. Fines shall be payable to the complainant. For purposes of enforcing this section, the provisions of sections 5-3-10.D, 5-3-10.E, 5-3-10.F, 5-3-11, 5-3-12 and 5-3-13 shall not apply."
11. Renumber original subsection C as subsection E.

12. In subsection E as renumbered, add “No Private Rights” at the end of the heading, and add the following provision at the end of the paragraph: “Nothing in this section shall be construed to create a private right of action to seek damages or other relief of any kind.”
13. Add a new subsection F as follows (unless council adopts this as an amendment at an earlier meeting): “This section shall be effective July 1, 2020.”