

Legislation Text

File #: 150815, Version: 1

Amending Chapter 9-3500 of The Philadelphia Code, entitled "Fair Criminal Records Screening Standards," by amending certain definitions and adding certain additional requirements with respect to screening job applicants and license applicants for criminal history; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 9-3500 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 9-3500. FAIR CRIMINAL RECORDS SCREENING STANDARDS.

\* \* \*

§ 9-3502. Definitions.

As used in this Chapter the following terms have the following meanings:

\* \* \*

(3) "Conditional offer of employment" means an offer by an employer to hire an applicant, which may be withdrawn only if the employer subsequently determines that the applicant (i) has a conviction record which, based on an individualized assessment as required by § 9-3504(2), would reasonably lead an employer to conclude that the applicant would pose an unacceptable risk in the position applied for; or (ii) does not meet other legal or physical requirements of the job.

[(3)] (4) "Conviction" \* \* \*

[(4)] (5) "Employment" means 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. "Employment" shall not, for the purposes of this Chapter, include membership in any law enforcement agency, or domestic services in or about the private home in which the employer resides, as defined in the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101, and its regulations at 34 Pa. Code § 231.1 (b).

[(5)] (6) "Inquiry" \* \* \*

[(6)] "Interview" means 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.]

\* \* \*

(9) "Private employer" means any person, company, corporation, labor organization or association which employs [ten or more] any persons within the City of Philadelphia. It includes job placement and referral

agencies and other employment agencies.

\* \* \*

§ 9-3504. Prohibition Against Unfair Discrimination Against Persons Previously Convicted of One or More Criminal Offenses.

(1) In connection with the licensing or employment of any person, it shall be an unlawful discriminatory practice for a City agency or private employer to make any inquiry regarding or to require any person to disclose or reveal any criminal convictions during the application process. *The inclusion of such inquiry on an employment application shall be unlawful, whether or not certain applicants are told they need not answer the question.* The application process shall begin when the applicant inquires about the employment being sought and shall end when an employer has [accepted an employment application] *extended a conditional offer of employment to the applicant. The inquiry prohibited by this Section shall include any question regarding the applicant's willingness to submit to a background check.*

(a) *If an applicant voluntarily discloses information regarding his or her criminal convictions during the application process, the employer may discuss the criminal conviction disclosed by the applicant at that time.*

(b) *An employer may give notice, to prospective applicants or during the application process, of its intent to conduct a criminal background check after any conditional offer is made, provided that such notice shall be concise, accurate, made in good faith, and shall state that any consideration of the background check will be tailored to the requirements of the job.*

(2) [It shall further be an unlawful discriminatory practice for a City agency or private employer to make any inquiry regarding, or to require any person to disclose or reveal any criminal convictions against such person before and during the first interview. If an employer does not conduct an interview, that employer is prohibited from making any inquiries or gathering any information regarding the applicant's criminal convictions. If the applicant voluntarily discloses any information regarding his or her criminal convictions at the interview, the employer may discuss the criminal conviction disclosed by the applicant.]

*No employer shall maintain a policy of automatically excluding any applicant with a criminal conviction from a job or class of jobs. A prospective employer shall not reject an applicant based on his or her criminal record, unless such record includes conviction for an offense that bears such relationship to the employment sought that the employer may reasonably conclude that the applicant would present an unacceptable risk to the operation of the business or to co-workers or customers, and that exclusion of the applicant is compelled by business necessity. An employer shall make a determination regarding such risk only after reviewing the applicant's specific record and the particular job being sought, and conducting an individualized assessment of the risk presented. Such assessment shall include:*

(a) *The nature of the offense;*

(b) *The time that has passed since the offense;*

(c) *The applicant's employment history before and after the offense and any period of incarceration;*

- (d) *The particular duties of the job being sought;*
- (e) *Any character or employment references provided by the applicant; and*
- (f) *Any evidence of the applicant's rehabilitation since the conviction.*

(3) *A city agency or private employer may consider, for employment purposes, a prospective employee's conviction record only to the extent that the conviction occurred fewer than seven (7) years from the date of the inquiry. Any period of incarceration shall not be included in the calculation of the seven (7) year period.*

§ 9-3504a. *Notice. If an employer rejects an applicant for a job opening based in whole or in part on criminal record information, the employer shall notify the applicant in writing of such decision and its basis, and shall provide the applicant with a copy of the criminal history report. The employer shall allow the applicant ten (10) business days to provide evidence of the inaccuracy of the information or to provide an explanation.*

\* \* \*

§ 9-3505. Exemptions.

(1) The prohibitions of this Chapter shall not apply if the inquiries or adverse actions prohibited herein are specifically authorized *or mandated* by any other applicable law *or regulation*.

\* \* \*

§ 9-3506. Enforcement.

(1) The [Mayors office of Labor Standards, or such other office or agency as the Mayor shall designate,] *Philadelphia Commission on Human Relations (the "Commission")* shall administer and enforce this Chapter. *The Commission is authorized to issue regulations in furtherance of its administration and enforcement authority.*

(2) Each violation of this Chapter shall constitute a "Class III" offense and any person who violates this Chapter shall be subject to a fine as set forth in § 1-109(3).

(3) *Any person injured by a violation of this Chapter may report such violation to the Commission. In order to exercise the private right of action provided under § 9-3508 of this Chapter, a person must first report the violation to the Commission within 300 calendar days of the unlawful act. In addition to the penalties authorized by § 9-3506(2), the Commission may issue an order directing an employer who has engaged in practices made unlawful by this Chapter to take affirmative action to redress the harms suffered by the complainant. The Commission may order remedies, including, but not limited to:*

- (a) *An order requiring the respondent to cease and desist such unlawful practice;*
- (b) *Any injunctive or other equitable relief;*
- (c) *Payment of compensatory damages;*
- (d) *Payment of punitive damages, not to exceed \$2,000 per violation;*

(e) *Payment of reasonable attorneys' fees.*

\* \* \*

§ 9-3508. *Private Right of Action.*

(1) *If within one (1) year after the filing of a complaint with the Commission, the Commission concludes that it has not found sufficient evidence of a violation to proceed further with an investigation, or has not entered into a conciliation agreement to which the complainant is a party, the Commission must notify the complainant that it is dismissing the case. On receipt of such a notice, if the complainant filed the complaint within 300 days of the unlawful act, the complainant may bring an action in a court of competent jurisdiction based on the right to fair criminal record screening standards granted by this Chapter.*

(2) *An action under this Section shall be filed within two years after the date of notice from the Commission closing the case. Any action so filed shall be served on the Commission at the time the complaint is filed in court. The Commission shall notify the complainant of this requirement.*

(3) *The court may grant any relief it deems appropriate, including the right to recover for each violation:*

(a) *Compensatory damages;*

(b) *Punitive damages;*

(c) *Reasonable attorneys' fees;*

(d) *Court costs; and*

(e) *Such other relief, including injunctive relief, as the court may deem appropriate.*

(4) *Nothing in this Chapter limits the right of an injured person to recover damages under any other applicable law or legal theory.*

\* \* \*

§ 9-3509. *Posting requirement. Any employer subject to the terms of this Chapter shall post a summary of the Chapter requirements, in a form to be supplied by the Commission, in a conspicuous place on the employer's website and premises, where applicants and employees will be most likely to notice and read it.*

SECTION 2. **Effective date.** This Ordinance shall take effect ninety (90) days after it is signed into law.

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**Explanation:**

[Brackets] indicate matter deleted.

*Italics* indicate new matter added.

