

Legislation Text

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Amending Chapter 9-3500 of The Philadelphia Code, entitled "Fair Criminal Record Screening Standards," by amending definitions, revising restrictions, and amending and clarifying remedies, 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 amended to read as follows:

CHAPTER 9-3500. FAIR CRIMINAL RECORD SCREENING STANDARDS

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§ 9-3502. Definitions.

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

(4.1) *Employee means any person employed or permitted to work at or for a Private Employer within the geographic boundaries of the City, including as an independent contractor, transportation network company driver, rideshare driver, or other gig economy worker.*

(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 *et seq.*, and its regulations at 34 Pa. Code § 231.1(b).

(5.1) *Employment Process means the process by which an employer assesses the suitability of an Applicant for prospective employment or consideration of any aspect of the Employee's re-employment or continued employment, including promotion, raise or termination.*

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(8.1) *Pending criminal charge means an existing accusation that a person has committed a crime, lodged 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.*

* * *

(9) Private employer means any person, company, corporation, labor organization or association which employs any persons within the City of Philadelphia. It includes job placement and referral agencies [and], other employment agencies, *and any third-party person or entity that facilitates the relationship of work for pay between two other parties, as full-time or part-time employees or as independent contractors.*

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§ 9-3503. Prohibition Against Unfair Discrimination Against Persons Previously Arrested for One or More Criminal Offenses.

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(2) *Nothing herein shall prevent an Employer from making an inquiry, or requiring an Employee to respond to an inquiry, about a Pending Criminal Charge, when the employer possesses reasonably reliable information to indicate a Pending Criminal Charge has been lodged against the Employee that relates to the particular duties of their job. Employers may require employees to report a Pending Criminal Charge, provided the Employer does so pursuant to a written policy detailing what offenses are reportable. An employer shall not take an adverse action against an Employee based on a Pending Criminal Charge unless the offense bears such relationship to the Employee's duties that the Employer may reasonably conclude that the Employee's continued Employment would present an unacceptable risk to the operation of the business or to co-workers or customers, and that exclusion of the Employee is compelled by business necessity.*

§ 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] *Employment Process, except as required by federal or state law.* The inclusion of such inquiry on an employment application shall be unlawful, whether or not certain Applicants *or Employees* 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 extended a conditional offer of employment to the Applicant.] The inquiry prohibited by this Section shall include any question regarding the Applicant's *or Employee's* willingness to submit to a background check. *When such inquiry is required by federal or state law, such inquiry shall be conducted only after a Conditional Offer of Employment has been extended to the Applicant or Employee.*

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

(b) An employer may give notice, to prospective Applicants or during the [application process] *Employment Process*, of its intent to conduct a criminal background check after any [c]Conditional offer of *employment, promotion or re-employment* 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) No employer shall maintain a policy of automatically excluding any [a]Applicant or Employee with a criminal conviction from a job or class of jobs. A prospective employer shall not reject an [a]Applicant or Employee based on his or her criminal record, unless such record includes conviction for an offense that bears such relationship to the [e]Employment sought that the employer may reasonably conclude that the [a]Applicant or Employee would present an unacceptable risk to the operation of the business or to co-workers or customers, and that exclusion of the [a]Applicant or Employee is compelled by business necessity. An employer shall make a determination regarding such risk only after reviewing the [a]Applicant's or Employee's specific record and the particular job being sought, and conducting an individualized assessment of the risk presented. Such assessment shall include:

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(c) The [a]Applicant's or Employee's employment history before and after the offense and any period of incarceration;

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(e) Any character or employment references provided by the [a]Applicant or Employee; and

(f) Any evidence of the [a]Applicant's or Employee's rehabilitation since the conviction.

(3) A city agency or private employer may consider, for employment purposes, [a prospective employee's] an Applicant's or 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.

§ 9-3504.1. Notice.

If an employer rejects an [a]Applicant or Employee 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 [a]Applicant or Employee with a copy of the criminal history report. The employer shall allow the [a]Applicant or Employee ten (10) business days to provide evidence of the inaccuracy of the information or to provide an explanation.

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§ 9-3508. Private Right of Action.

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

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(a) [Punitive] *Liquidated damages, equal to the payment of the maximum allowable salary for the job subject to the complaint for a period of one month. Total liquidated damages shall not exceed five thousand dollars (\$5,000);*

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§ 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 [a]Applicants and [e]Employees will be most likely to notice and read it.

§ 9-3510. Prohibition on Consideration of Juvenile Records.

(1) In connection with the employment or licensing of any person, it shall be an unlawful discriminatory practice for a City agency or private employer, at any stage in the [hiring or application process] *Employment Process*, to take any adverse action against such person on the basis of the person's juvenile record.

(2) It shall further be an unlawful discriminatory practice for a City agency or private employer, in connection with the employment or licensing of any person, to require the person to disclose or reveal any item or information in the person's juvenile record. The inclusion of such inquiry on an employment application shall be unlawful, whether or not certain [a]Applicants *or Employees* are told they need not answer the question. The inquiry prohibited by this Section 9-3510 shall include any question regarding the [a]Applicant's *or Employee's* willingness to submit to a background check.

(a) Voluntary disclosure of juvenile record information by an [a]Applicant *or Employee* [for employment] shall not modify or waive the prohibition in subsection 9-3510(1) on taking adverse action against a person on the basis of the person's juvenile record.

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SECTION 2. Effective date. This Ordinance shall take effect upon April 1, 2021.