

LEGISLATIVE DIGEST

[Administrative Code - City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions]

Ordinance amending the Administrative Code to require that City contractors and their subcontractors not discriminate against employees or applicants based on criminal history and refrain from asking applicants about criminal history as part of the initial application for employment.

Existing Law

Current law prohibits City contractors and subcontractors from discriminating against their employees and applicants for employment based on the fact or perception of their race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classes protected under City law, or in retaliation for opposition to any practices forbidden under City law.

Amendments to Current Law

This ordinance would add criminal history as a basis on which City contractors and subcontractors could not discriminate against their employees and applicants for employment. However, as explained below, the prohibition would not be absolute.

Job Applicants

The ordinance would prohibit contractors/subcontractors from inquiring about criminal history during the initial application process, except when state or federal law would preclude employment based on criminal history. In all other cases, contractors/subcontractors could only inquire into criminal history once they determine the applicant is otherwise qualified for the position, during the interview process.

In considering an applicant with a criminal history, the anti-discrimination provisions of the ordinance would not apply if state or federal law would preclude employment in the position based on the history, or if the contractor/subcontractor determines that the applicant is unsuitable for the position after considering six factors: (1) nature and gravity of the offense; (2) degree to which the arrest or conviction is related to the duties and responsibilities of the job; (3) age of applicant when arrested or convicted; (4) time elapsed since arrest or conviction; (5) evidence of rehabilitation; and (6) any other mitigating circumstances. (These are the same factors the City takes into account when considering whether criminal history renders an applicant unsuitable for a particular position. See *San Francisco Department of Human Resources : Conviction History FAQ* at < <http://www.sfdhr.org/index.aspx?page=25>>.)

Employees

The ordinance would prohibit contractors/subcontractors from discriminating against current employees based on criminal history except when the offense occurs after the start of employment and is material to the circumstances of employment. In those cases, assuming the offense is permitted by law to be examined and used as a basis for discipline, the ordinance would not apply to any discipline taken, up to and including termination. (These guidelines are similar to those described by the Civil Service Commission in determining whether to discipline for offenses occurring after the start of employment. See *Civil Service Commission : Disclosure and Review of Criminal History Records* at <<http://www.sfgov3.org/index.aspx?page=402>>.)

Background Information

State law bans most employers from seeking or considering information about an applicant's *arrest history* if the arrest did not result in a conviction. The ban does not apply to (1) employers seeking to fill peace officer or other criminal justice positions or (2) as to certain types of arrests, employers at health facilities seeking to fill positions with regular access to patients or access to drugs and medication. State law also bans all but a few employers from inquiring about or considering certain marijuana related convictions more than two years old.

In October 2005, the Board of Supervisors passed a resolution urging the Civil Service Commission ("CSC") and the Department of Human Resources ("DHR") to review and revise City hiring policies to ensure that those with criminal histories are not unreasonably denied employment, and to eliminate the requirement that applicants disclose all past convictions on the City's preliminary job application.

The City's current policy regarding consideration of criminal history in hiring City employees is as follows. All applicants fill out the City's Conviction History form. However, the form is not submitted with the initial job application unless required by the job announcement. If the job opening is one where certain convictions would preclude employment, the City reviews the applicant's Conviction History form at an early stage in the process and eliminates applicants with disqualifying convictions. If the opening is for a job where a criminal conviction would not automatically bar employment, the City does not review or consider an applicant's criminal history unless the applicant becomes a finalist for the job. If the applicant does have a criminal history, the City uses the same factors included in the Ordinance to determine whether the applicant is suitable for the position. An applicant who is not selected for a particular position based on conviction history may appeal the decision to the Civil Service Commission. See *San Francisco Department of Human Resources : Getting a Job* at <<http://www.sfdhr.org/index.aspx?page=20#copies>>; *San Francisco Department of Human Resources : Conviction History FAQ* at <<http://www.sfdhr.org/index.aspx?page=25>>.