

LEGISLATIVE DIGEST

[Police, Administrative Codes - Considering Criminal History in Employment and Housing Decisions]

Ordinance amending the Police Code to require Employers and Housing Providers to limit the use of criminal history information and follow certain procedures and restrictions when inquiring about and using conviction history information to make decisions about employment and tenancy in San Francisco; and amending the Administrative Code to require City contractors and subcontractors to adhere to the same limits, procedures, and restrictions when making decisions regarding employment of persons for work on City contracts and subcontracts.

Existing Law

The City has no law regulating the use of criminal history in employment and housing decisions generally, or with respect to employment decisions of City contractors. As for its own work force, the City has rules governing employment decisions that are similar to the provisions in the proposed ordinance. There are a number of state and federal laws, including regulations of state and federal agencies, that address the use of criminal history information in the employment context, including in some circumstances requiring that it be considered or requiring that persons with certain criminal backgrounds not be hired in certain positions.

Amendments to Current Law

The proposed ordinance would place limits on and establish procedures for the use of criminal history information by employers, housing providers, and City contractors and subcontractors.

The proposed ordinance would cover employers with 20 or more employees regardless of location, but would only apply to employment situations located in whole or in substantial part in San Francisco. Regarding employment, there are three essential features of the ordinance.

1. Certain matters off-limits. Certain aspects of criminal history may not be considered in any manner or at any time by an employer. These are: (a) an arrest not leading to a conviction (other than an arrest that is still the subject of a criminal investigation or trial); (b) participation in or completion of a diversion or deferral of judgment program; (c) a conviction that has been expunged or otherwise made inoperative; (d) a conviction or other determination in the juvenile justice system; and (e) a conviction that is more than 7 years old (measured from date of sentencing).

2. "Ban the box." An application form may not contain an inquiry regarding criminal history. Nor may the employer otherwise inquire about criminal history at the beginning of the hiring process. Rather, such inquiry is permissible only after the first live interview with the person or, at the employer's discretion, after a conditional offer of employment.

3. A process for considering criminal history. If the timing is proper (2 above), the employer may inquire about criminal history and may receive information through a background check report. The employer must follow a process intended to promote relevance, inclusion, and accountability.

- **Relevance:** In addition to not being able to consider certain items (1 above), the employer may consider only those convictions and unresolved arrests that directly relate to the employment position in question. And the employer must also consider the time that has elapsed since the occurrence giving rise to the conviction or unresolved arrest.
- **Inclusion:** The person (typically an applicant but in some circumstances an employee) must be given an opportunity to present evidence that the criminal history information about them is inaccurate, and to present evidence of rehabilitation or other mitigating circumstances.
- **Accountability:** If there is a denial of employment, the employer must complete a simple, short questionnaire documenting the above process.

The proposed ordinance also requires employers to post a notice at its offices and work sites informing persons of their rights under the ordinance, and to maintain records of their employment decisions that would be sufficient for the Office of Labor Standards Enforcement (OLSE) to monitor compliance. OLSE is given enforcement authority regarding violations of the ordinance.

The proposed ordinance's approach to City contractors is similar. As for housing providers, the approach is similar, too, although there are some differences and refinements. The "accountability" process is somewhat different, not involving a questionnaire. The Human Rights Commission (HRC), rather than OLSE, is given enforcement authority regarding violations of the housing provisions of the ordinance. The housing providers covered are those that own or develop affordable housing in the City and who receive funding from the City, directly or through financing resulting from the issuance of tax-exempt bonds, as well as owners and developers of affordable units within the meaning of the Planning Code.

Under the proposed ordinance, the OLSE and HRC are given authority to sponsor community outreach programs to familiarize the public, and particularly individuals with a criminal history, with the protections of the ordinance. This function may be delegated to or shared with community-based organizations.