



Office of Mayor Charlie Hales  
City of Portland

## **Eliminating Barriers to Employment for Applicants with Criminal Backgrounds**

### **FREQUENTLY ASKED QUESTIONS**

#### **Why did the Mayor bring this ordinance to Council?**

Studies show that removing job barriers for individuals with criminal records helps the economy. The National Employment Law Project estimates that there are roughly 70 million people in the United States who have arrest or conviction records<sup>1</sup>. Many employers refuse to consider any applicants with criminal records. Many help-wanted advertisements disqualify those with criminal records. And routine criminal background checks by employers have increased dramatically in recent years.

Putting formerly incarcerated people back to work increases their lifetime earnings and tax contributions and saves public funds by reducing recidivism. Employing the formerly incarcerated also improves public safety, since employment has been shown to be a major factor in reducing further illegal activity by those who have served time.

#### **What does this ordinance do?**

The purpose of this ordinance is to remove barriers to employment so that applicants with criminal histories can adequately provide for themselves and their families; to reduce disparate impacts on people of color that result from the use of criminal history information in hiring and employment decisions; and to reduce recidivism through the reintroduction of formerly incarcerated individuals into community life.

This ordinance requires that non-exempt employers delay the timing of background checks until the conditional offer. This means that employers cannot inquire into or access an applicant's criminal background until they have offered the applicant the job with a criminal background check as a condition of employment.

#### **The Oregon State Legislature also passed “Ban the Box” legislation, how is this different?**

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<sup>1</sup> NELP, “Advancing a Federal Fair Chance Hiring Agenda: Background Check Reforms in Over 11 Cities, Counties & States Pave the Way for Presidential Action,” (Jan. 2015) at fn. 2 ([www.nelp.org/publication/advancing-a-federal-fair-chance-hiring-agenda/](http://www.nelp.org/publication/advancing-a-federal-fair-chance-hiring-agenda/)).

The biggest difference between what the State passed and what the City passed is the timing of when an employer can inquire about an applicant's criminal background. The State's legislation prohibits non-exempted employers from excluding an applicant from an initial interview solely because of past criminal convictions. Employers are prohibited from inquiring about an applicant's criminal background on their applications or prior to the first interview.

The City's law prohibits non-exempt employers from inquiring into or accessing criminal backgrounds prior to the conditional offer phase.

### **Why does moving the background check to after the conditional offer matter?**

Waiting to inquire about criminal histories until the conditional offer phase is beneficial to both the applicant and the employer for many reasons. It provides clarity to the applicant and the enforcement agency that the applicant was denied the position not because of their qualifications, skills or merits, but because of their criminal histories. It also ensures that the applicant was fully considered by the employer for the position based on their qualifications, without the stigma of a record affecting the employer's assessment. Studies show that if an employer knows about an applicant's criminal record, their chance of a call back reduces by an average of 50 percent, and that reduction increases for black male job candidates<sup>2</sup>.

### **As a business owner, what does this mean for me?**

If you are a non-exempt employer, this ordinance prevents you from accessing an applicant's criminal background until the conditional offer phase of the hiring process. This means that you cannot include the question on your application, or specifically ask about criminal history during the interview process.

Once you have made a conditional offer to an applicant, you are then able to inquire into and consider their criminal background. In considering the relevance of an applicant's criminal background in relation to the job, this ordinance requires that you assess the nature and gravity of the criminal offense, the time that has elapsed since the criminal offense took place, and the nature of the employment held or sought. Once considered, you may rescind the conditional offer if needed.

### **Is there anything on a background check that I cannot consider?**

This ordinance does prevent employers from considering the following things, which may appear on an applicant's background check:

1. An arrest not leading to a conviction, except where a crime is unresolved or charges are pending;
2. Convictions that have been judicially voided or expunged; or
3. Charges not involving physical harm or attempted physical harm that have been resolved through the completion of a diversion or deferral of judgement program.

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<sup>2</sup> See NELP, "Research Supports Fair-Chance Policies" ([www.nelp.org/publication/research-supports-fair-chance-policies/](http://www.nelp.org/publication/research-supports-fair-chance-policies/)).

**Will I be forced to hire an applicant with a criminal background?**

No. Nothing in this ordinance requires that you hire an applicant with a criminal background.

**If I make an adverse employment decision, how do I notify the applicant?**

If after consideration, you choose to rescind a conditional offer, you are required to notify the applicant in writing and identify the relevant criminal convictions on which the decision is based. This may be as simple as including a print out of the background check, with the relevant convictions highlighted.

**How will I know if I am exempt?**

There are several categories that exempt businesses can fall into:

1. If you have fewer than six employees;
2. If federal, state or local law requires that you consider an applicant's criminal history;
3. If you are a law enforcement agency, in the criminal justice system or seeking a nonemployee volunteer;
4. If the position you are hiring for involves the direct access or provision of services to children, the elderly, persons with disabilities, persons with mental illness, or individuals with alcohol and drug dependence or substance abuse disorders;
5. If the position you are hiring for has been determined by administrative rule to present public safety concerns or a business necessity;
6. If the position you are hiring for is designated as part of a federal, state, or local government program designed to encourage the employment of applicants with criminal backgrounds.

**What is the process for writing the administrative rules?**

The City Attorney for the City of Portland is required to draft rules, procedures and forms to assist in the implementation of this ordinance. The public will be notified and have an opportunity to weigh in during the public review process, lasting a minimum of 21 days, in which members of the public, including business representatives, can provide written and oral testimony. At the end of this process, the draft rules will be brought before Council for review and authorization.

**When does this go into effect?**

This ordinance and its administrative rules go into effect on July 1, 2016.

**Who will enforce this law?**

The City will contract with the Bureau of Labor and Industries (BOLI) to enforce the ordinance. BOLI enforces the state law, and the members of the City Council agreed that it makes the most sense to have BOLI enforce this ordinance as well..

**If I am an applicant, and I think a business has violated this law, how do I file a complaint?**

As with any other employment complaint, if you think that a business has violated this law, the first thing you should do is contact BOLI. A complaint can be filed online at [http://www.oregon.gov/boli/CRD/Pages/C\\_Crcompl.aspx](http://www.oregon.gov/boli/CRD/Pages/C_Crcompl.aspx) or by calling 971-673-0764.

Once received, an agency representative will review and investigate your complaint to determine whether the law has been violated. Upon completion of the investigation, BOLI will either issue a formal notice of Substantial Evidence Determination if substantial evidence of a violation is found or dismiss the case if no violation is found.

### **If a complaint is filed against my business, what will happen?**

If an applicant files a complaint against your business, you will be contacted by a representative of BOLI tasked with reviewing and investigating the applicant's concern. If the BOLI Commissioner has reason to believe that a violation has occurred, the following may occur:

1. A finding of substantial evidence will be issued to the employer;
2. The commissioner may take immediate steps to settle the matter through conference, conciliation and persuasion, to eliminate the effects of the unlawful practice;
3. The commissioner may hold a hearing in which findings of facts and conclusions of law may be issued;
4. The commissioner may issue a temporary cease and desist order, requiring the employer to refrain from the unlawful practice alleged;
5. The commissioner may impose a civil penalty upon the employer, not to exceed \$1,000.