

CHAPTER 14.5. – MISCELLANEOUS BUSINESS REGULATIONS

ARTICLE IX. FAIR CHANCE HIRING.

Sec. 14.5-177. – Authority.

This article is enacted under the Home Rule Power of the City of Gainesville, Florida, in the interest of the health, peace, safety, and general welfare of the people of the city.

Sec. 14.5-178. Scope.

(A) This article applies to any employer as defined in this Article.

(B) This article does not apply to a job/employment for which a federal, state, or local law, or compliance with legally mandated insurance or bond requirement disqualifies an individual based on criminal history.

(C) Nothing in this article limits an employer's authority to withdraw a conditional offer of employment for any lawful reason, including the determination that an individual is unsuitable for the job based on an individualized assessment of the individual's criminal history in accordance with well-settled federal and state law.

(D) Nothing in this article limits an individual's ability to seek redress under Title VII of the Civil Rights Act of 1964, Title VI of the Consumer Credit Protection Act (Fair Credit Reporting Act), the Florida Civil Rights Act of 1992, or any other federal or state legislation.

Sec. 14.5-179. Findings of fact.

(A) The city commission finds that denying an employment opportunity to an otherwise qualified person based on the person's criminal history that is not relevant to the job under consideration:

- (1) is unjust;
- (2) is detrimental to the health, safety, and welfare of the residents of the City;
- (3) prevents the reintegration of the person into the community;
- (4) creates a burden on public resources and law enforcement;
- (5) contributes to crime and recidivism; and
- (6) contributes to unemployment and harms the local economy.

(B) The city commission further finds that it is within the police power and the responsibility of the City to remedy the problems enumerated in subsection (A).

Sec. 14.5-180. Definitions.

In this article:

(A) *Adverse action* means a refusal to hire, a refusal to promote, or the revocation of an offer of employment or promotion based on receipt or review of information detailing criminal history.

(B) *Application* means a written or oral expression of interest in a job by an individual made in compliance with the employer's established criteria for receiving expressions of interest.

(C) *Conditional Employment Offer* means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's evaluation of the individual's criminal history, and may be conditioned on any pre-employment medical examinations authorized under the Americans with Disabilities Act (ADA).

(D) *Criminal History* means an arrest, conviction, plea of nolo contendere, or deferred adjudication arising from a felony or misdemeanor criminal accusation made under state law, federal law, or a comparable law of another state of the United States.

(E) *Employment* means to work for an employer for pay. The term includes full time work, part time work, temporary or seasonal work, contract work, casual or contingent work, work through the services of a temporary or other employment agency, and participation in a vocational, apprenticeship, or educational training program.

(F) *Employer* means a person, company, corporation, firm, labor organization, or association that employs at least fifteen (15) individuals whose primary work location is in the City for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year. The term includes an agency acting on behalf of an employer. The term does not include:

- (1) the United States;
- (2) a corporation wholly owned by the government of the United States;
- (3) a bona fide private membership club (other than a labor organization) that is exempt from taxation under Section 501(c) of the Internal Revenue Code;
- (4) the state or a state agency;
- (5) a political subdivision of the state;
- (6) a daycare or child care facility as defined by Florida Statutes;
- (7) a care facility as defined by Florida Statutes; or
- (8) any other entity who is excluded by operation of state or federal law.

(G) *Individualized assessment* means an evaluation of the criminal history of an individual that includes, at a minimum, the following factors:

- (1) the nature and gravity of any offenses in the individual's criminal history;
- (2) the age of the individual at the time of the offense;
- (3) the length of time since the offense and completion of the sentence;
- (4) the nature and duties of the job for which the individual has applied; and

(5) any information demonstrating the individual's rehabilitation and good conduct since the occurrence of the criminal offense.

(H) *Job* means an employment position with an employer for which the employer has solicited or accepted applications and which the employer is currently attempting to fill.

(I) *Staffing agency* means an employer that:

(1) assigns individuals employed by it to perform work for another employer; and

(2) retains the obligation to pay such individuals for the work performed for the other employer.

(J) *Staffing pool* means a list of individuals retained by a staffing agency before the assignment of a specific job to perform for another employer.

Sec. 14.5-181. Fair chance hiring practices.

(A) An employer may not publish or cause to be published information about a job covered by this article that states or implies that an individual's criminal history automatically disqualifies the individual from consideration for the job.

(B) An employer may not solicit or otherwise inquire about the criminal history of an individual in an application for a job covered by this article.

(C) An employer may not solicit from the applicant or otherwise inquire through third-parties about an arrest or criminal accusation made against an individual, other than an arrest or criminal accusation relating to domestic violence, which:

a. is not then pending against the applicant; or

b. did not result in a conviction, plea of nolo contendere, or deferred adjudication.

(D) An employer may not solicit criminal history information about an individual or consider an individual's criminal history unless the employer has first made a conditional employment offer to the individual. This does not preclude an employer from explaining to applicants, in writing, the individualized assessment system that the employer uses to consider criminal history.

(E) An employer may not refuse to consider employing an individual in a job covered by this article because the individual did not provide criminal history information before the individual received a conditional employment offer.

(F) An employer may not take adverse action against an individual because of the individual's criminal history unless the employer has determined that the individual is unsuitable for the job based on an individualized assessment conducted by the employer.

(G) Prior to taking adverse action against an individual because of the individual's criminal history, an employer must:

a. inform the individual of the basis for the decision;

b. provide the individual with the criminal history records used by the employer in consideration of the individual's application; and

c. provide the individual a reasonable opportunity to provide the employer with additional context about the criminal history records and any information demonstrating the individual's rehabilitation and good conduct since the occurrence of the criminal offense.

(H) An employer who takes adverse action against an individual based on the individual's criminal history must inform the individual in writing that:

- a. the adverse action was based on the individual's criminal history; and
- b. include the following statement in the notice:

The City of Gainesville Code of Ordinances, Chapter 14.5, Section 14.5-181 prohibits denying an employment opportunity to an otherwise qualified person based solely on the person's criminal history that is not relevant to the job under consideration.

(I) Notwithstanding any other part of this article, a staffing agency may solicit criminal history information about an individual and make an individualized assessment of an individual's criminal history when the staffing agency has identified a job to which the individual will be employed or placed in a staffing pool.

Sec. 14.5-182. Retaliation prohibited.

An employer may not take adverse action against an individual because the individual has reported a violation of this article by an employer, or has participated in an administrative proceeding under this article.

Sec. 14.5-183. Administration.

(A) The Office of Equity and Inclusion shall:

- (1) educate employers and residents about this article;
- (2) receive and investigate complaints, including anonymous complaints, alleging a violation of this article;
- (3) enforce this article;
- (4) seek voluntary compliance with this article before assessing a civil penalty; and
- (5) adopt rules necessary to implement this article.

(B) To be considered by the Office of Equity and Inclusion, a complaint alleging a violation of this article must be filed with the Office of Equity and Inclusion no later than the 90th calendar day after the individual receives knowledge of the alleged violation, but in no event later than 180 days from the date of the alleged violation.

(C) For purposes of enforcement of this article, employees of the Office of Equity and Inclusion may receive appropriate training and be designated code enforcement officers as provided in Sec. 2-337(a).

(D) If the Office of Equity and Inclusion finds that a violation of this ordinance has occurred, and voluntary compliance cannot be obtained, the Office of Equity and Inclusion shall provide notice to the employer and issue a civil citation as provided in Sec. 14.5-184.

Sec. 14.5-184. Penalties.

The city may enforce this article by civil citation in accordance with division 6, article V, chapter 2, except the following additional procedures shall apply:

(A) Half of any civil penalty recovered under this article shall be awarded to the complainant.

(B) For the first violation of this article, an employer will be subject to a civil penalty in the amount of \$500.

(C) For each subsequent violation of this article, an employer will be subject to a civil penalty in the amount of \$1,000.

(D) An employer shall only be subject to one civil penalty assessment per advertisement about a job covered by this article, or per application that violates this article.

(E) For a first-time violation of this article by an employer, the Office of Equity & Inclusion may instead issue a warning if the employer attends an appropriate training session about compliance with this article.

Sec. 14.5-185. Data and reporting.

(A) The Office of Equity & Inclusion shall maintain data on the number of complaints filed pursuant to this article, demographic information on the complainants, the number of investigations it conducts, and the disposition of every complaint and investigation.

(B) Data maintained by the Office of Equity & Inclusion pursuant to subsection (A) of this section shall be submitted to the city commission annually, beginning one year from the effective date of this ordinance.