

By: Mr. Smith

Ordinance Amendment

The Common Council of the City of Buffalo does hereby ordain as follows:

Section 1. That the Chapter 154 of the Code of the City of Buffalo be amended by adding a new Article V thereto to read as follows:

Article V. Fair Employment Screening.

§154-25 Fair Employment Screening.

The City of Buffalo, its vendors, and any employer located within the City of Buffalo limits shall not ask questions regarding or pertaining to an applicant's prior criminal conviction on any preliminary employment application. Consideration of the candidate's prior criminal convictions shall take place only after an application is submitted and to begin during an initial interview, or thereafter.

§ 154-26 Definitions.

For purposes of this article, the following terms shall have the following meanings:

- A. "Applicant": any person considered or who requests to be considered for employment by an employer.
- B. "City": the City of Buffalo, its departments, administrative units and related agencies.
- C. "Conviction": any sentence imposed by a court of competent jurisdiction arising from a verdict or plea of guilty, including a sentence of incarceration, a suspended sentence, a sentence of probation, an unconditional discharge, or diversion program.

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- D. “Employment” : an occupation, vocation, job, work for pay, 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 employment by any government law enforcement agency.
- E. “Employer” : the city or any person, partnership, corporation, labor organization, not-for-profit, or association having fifteen or more employees.
- F. “Interview” : any direct contact by the employer with the applicant whether in person or by telephone, to discuss the employment being sought or the applicants’ qualifications.
- G. “Vendor” : any vendor, contractor, or supplier of goods or services to the City of Buffalo, including vendors located outside the City of Buffalo limits.

§ 154-27 Fair Employment Screening Standards

- A. It shall be an unlawful discriminatory practice for an employer to make any inquiry regarding, or to require any person to disclose or reveal, any criminal conviction during the application process. The application process shall begin when the applicant inquires about the employment sought and shall end when an employer has accepted an employment application.
- B. It shall be an unlawful discriminatory practice for an employer to make any inquiry regarding, or to require any person to disclose or reveal, any criminal conviction against such person before a first interview. If an employer does not conduct an interview, that employer must inform the applicant whether a criminal background check will be conducted before employment is to begin.

- C. An employer hiring for licensed trades or professions, including positions such as interns and apprentices for such licensed positions, may ask applicants the same questions asked by the trade or professional licensing body, in accordance with New York state law.
- D. An employer hiring for positions where certain convictions or violations are a bar to employment in that position under New York state or Federal law, shall not be constrained from asking questions about those convictions or violations.
- E. An employer shall comply with Article 23-A of the New York State Correction Law when considering an applicant's prior criminal convictions in determining suitability for employment. In accordance with Article 23-A, nothing in this ordinance shall be construed to limit an employer's authority to withdraw conditional offers of employment for any lawful reason, including the determination that the candidate has a conviction that bears a direct relationship to the duties and responsibilities of the position sought, or that hiring would pose an unreasonable risk to property or to the safety of individuals or the general public.

§ 154-28 Exceptions

- A. The prohibitions of this article shall not apply if the inquiries or adverse actions prohibited herein are specifically authorized by any other applicable law.
- B. The prohibitions of this article shall not apply to the Department of Police or the Department of Fire, or to any other employer hiring for "police officer" and "peace officer" positions, as defined by Criminal Procedure Law § 1.20 and § 2.10.

C. The prohibitions of this article shall not apply to any public or private school, nor to any public or private service provider of direct services specific to the care or supervision of children, young adults, senior citizens, or the physically or mentally disabled.

§ 154-29. Enforcement

A. Any person aggrieved by a violation of this Article may commence a civil action or proceeding for injunctive relief, damages, and other appropriate relief in law or equity against a person who violates this article. In any such action or proceeding, the court, in its discretion, may allow for the party commencing such action or proceeding, if such party prevails, a reasonable attorney's fee as part of the costs.

B. Any person or organization, whether or not an aggrieved party, may file with the Commission on Citizens' Rights and Community Relations a complaint alleging violation of this article. Such complaint shall be in writing on a form prescribed by the Commission on Citizens' Rights.


C. Upon certification by the Commission on Citizens' Rights and Community Relations Director that there has been an affirmative finding of probable cause of discriminatory practice, the Director may request the Corporation Counsel to commence an action against the accused party, in a court of competent jurisdiction, seeking the imposition of the following penalties or a combination thereof:

(1) a penalty of five hundred dollars for the first violation of this Article; or

(2) a penalty of one thousand dollars for each subsequent violation of this Article.

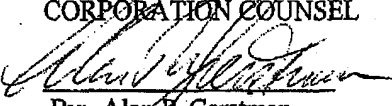
445

§2. This Ordinance Amendment shall take effect immediately upon being duly ratified pursuant to §3-19 of the City Charter.


Demone A. Smith

APPROVED AS TO FORM

TIMOTHY A. BALL
CORPORATION COUNSEL


By: Alan P. Gerstman
Asst. Corporation Counsel

Underlined material is new. Material in brackets [] is repealed.

**REFERRED TO THE COMMITTEE
ON LEGISLATION.**