



Fair Chance Hiring

Background

- On February 4, Council Member McGee presented a two-minute pitch to consider a Work Session to discuss the prevention of inquiries of an applicant's criminal history prior to making conditional offers of employment unless a law requires an earlier inquiry.
- On February 14, an Informal Staff Report was published in the Friday Report.
- On May 1, the Agenda Committee routed the pitch to a Work Session.

Fair Chance Hiring

- Fair Chance Hiring:
 - The policy or practice of not considering an applicant's criminal history in an employment application until later in the hiring process.
 - This does not limit the authority to withdraw an employment offer for a lawful reason.
- National Employment Law Project (NELP) 2021 data:
 - 37 states and 150 local governments have fair chance hiring laws for themselves as public employers
 - 15 states and 22 local governments extend those laws to private employers within their jurisdiction

State and Federal Regulations

- There is no federal or state law prohibiting a private employer from inquiring about an applicant's criminal history prior to making a conditional offer.
 - Some laws require a criminal background check for certain positions.
 - Peace officers, criminal justice, insurance, childcare, energy, etc.
- Title VII of the Civil Rights Act of 1964 prohibits facially neutral employment practices that cause a discriminatory impact.
- EEOC - An employer that rejects *everyone* with a conviction from all employment opportunities is likely engaging in Title VII discrimination.
- The Equal Employment Opportunity Commission (EEOC) interpretation of Title VII
 - Employers can request criminal history information, provided it does not result in unequal treatment with respect to a protected class.
 - To avoid discrimination, employers conduct an individualized assessment of a candidate's criminal record.
- The EEOC's best practice recommendations suggest employers consider asking criminal history questions later in the hiring process.

Local Regulation

- The City of Denton as an employer does not inquire about criminal history or conduct a background check until after a conditional offer of employment is made.
- Businesses may utilize fair chance hiring practices or policies based on their internal requirements or utilization of best practices.
- Based on the NELP data, most local governments that have enacted Fair Chance Hiring laws only apply to their organization as an employer.
 - An even greater number may utilize this practice outside of formal regulation.

Applies Only to Organization	Applies Across Jurisdiction
Dallas County	City of Austin
City of San Antonio	City of DeSoto
Travis County	
Harris County	

Ordinance Considerations

- Definitions
- Applicability and exemptions
 - Governmental agencies (county, school district, colleges and universities)
 - Positions that have local, state, or federal requirements to disqualify based on criminal history
 - Employer with 15 or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.
- Requirements
- Administration
- Investigation
 - The City does not have the capacity to conduct investigations.
 - Implementation could follow the City's existing Non-Discrimination Ordinance.
- Penalty

Council Direction

- Option 1: Move forward with a citywide ordinance
- Option 2: Move forward with an internal policy formalizing the City's fair chance hiring efforts (already in practice)
- Option 3: Do not move forward with the pitch