

November 9, 2012

The Honorable Mike McGinn
Mayor of Seattle
Seattle City Hall
600 4th Avenue, 7th Fl.
Seattle, WA 98104

The Honorable Bruce Harrell
Chair, Public Safety, Civil Rights, and Technology Committee, Seattle City Council
Seattle City Hall
600 4th Avenue, 2nd Fl.
Seattle, WA 98104

The Honorable Members of the Seattle City Council
Seattle City Hall
600 4th Avenue, 2nd Fl.
Seattle, WA 98104

RE: Proposed Ordinance no. 117583

Dear Mayor McGinn, Councilmember Harrell, and the Honorable Members of the Seattle City Council,

The undersigned associations represent a variety of employers, including non-profit, for-profit, and those who work with vulnerable populations. Though we may come from a wide swath of diverse interests and persuasions, a universal issue uniting us together is the critical need to protect the safety of people and property in workplaces in Seattle, Washington, and beyond. Serious issues facing employers, employees, and consumers everywhere are workplace violence, fraud, and theft. Protection against these harmful occurrences is an essential contribution expected and needed from employers through their vigilance in the hiring process, so that the face of their organization may be an honest and safe representation of what they stand for. This vigilance on the part of employers ensures that customers can feel comfortable entering a workplace and a business can run as effectively and efficiently as possible.

We are writing to express our concerns with Proposed Ordinance no. 117583 as introduced before the Seattle City Council's Public Safety, Civil Rights, and Technology Committee, which would limit the abilities of employers to perform this necessary duty they owe to their business and the public at large. This restriction appears through the expansion of limitations on using criminal background checks in hiring, and setting overtly difficult and unclear legal standards for employers, unprecedented by any action taken by Congress or the Equal Employment Opportunity Commission (EEOC) thus far.

Our support of the equal employment opportunity (EEO) standards currently in place is unwavering, as is our opposition to unlawful discrimination in the workplace and hiring process. The fair and appropriate use of criminal histories accomplishes the dual goals of protecting workplaces and allowing those who have made mistakes in their life a path to success and productivity. In changing the way EEO laws affect Seattle businesses and consumers, Proposed Ordinance no. 117583 would go against the approach traditionally taken by existing [federal EEO standards](#), which is that hiring decisions based on criminal history be balanced on the nature and gravity of an offence, the time passed since, and the nature of the job being sought. This change requiring a "direct connection" between a position and the offense committed in order for criminal history to be considered would bar completely the balanced approach already in place.

Additionally, questions remain on the troubling implications within the ordinance's domain. Of chief importance is the consideration of how employers will be treated within the realm of negligent hiring lawsuits. If an employer is effectively forced to hire someone with a significant criminal record, in the case where there can be found no "direct" relationship between the crime and the job in question, will they be held liable if their employee commits a crime while on the clock? As is the approach taken with prosecution of negligent hiring, "the issue of liability primarily focuses upon the adequacy of the employer's pre-employment investigation into the employee's background" ([Stires v. Carnival Corp. \(M.D.](#)

[Fla. 2002](#)). Other concerns, some of which have been expressed by Seattle City Council Members, include how ex-convicts would effectively become a protected class and able to sue if they feel they have been denied a job based on their criminal history; and the economic impact of internal theft, resulting from an increased proportion of convicted criminals placed in inappropriate positions, ultimately raising prices for the consumer.

The apparent intention of the proposed ordinance, to reduce recidivism through lowering barriers in the hiring process for those with criminal histories, is a noble one. However, the way the proposal attempts to bring this goal to life is misguided, and could actually have the effect of increasing the difficulty for ex-convicts to find work. Many convicted criminals go through re-adjustment, rehabilitation, or education programs while incarcerated or after their sentence. In the case of an individual who has significant gaps in employment history because of incarceration, and has participated in such programs, it would be helpful for an employer to receive an explanation of why these gaps exist, including why they have been imprisoned and which positive programs they have participated in since. If employers are not allowed to obtain or ask about criminal history until a conditional offer of employment is made, and there are significant unexplainable gaps in employment history, it is much more likely that this conditional offer will never take place.

All of these undesirable components of the proposed legislation underscore the need for a balanced approach, already in place within federal EEO standards, to the utilization of an applicant's criminal history by employers. The risks of theft, violence, and fraud in the workplace are very much realities in our world, and to deny employers the ability to do their job as responsible citizens and keep their work environments safe is an impractical solution to the problems ex-convicts face as they re-enter society. We of the undersigned associations strongly urge the Seattle City Council to further consider the real impact of Proposed Ordinance no. 117583 in order to keep the employers, employees, and consumers of Seattle as safe and productive as possible.

Sincerely,

American Apparel & Footwear Association

American Staffing Association

Consumer Data Industry Association

Food Marketing Institute

National Federation of Independent Business

National Ski Areas Association

Outdoor Amusement Business Association

Property Casualty Insurers Association of America