

Seattle Office for Civil Rights Rules
Chapter 80
Practices for administering Use of Criminal History in Employment Decisions
under SMC 14.17

General Provisions

SHRR 80-001	Definitions
SHRR 80-010	Effect on other laws
SHRR 80-020	Practice where rules do not govern
SHRR 80-030	Construction of rules

Employee

SHRR 80-040	Substantial part of services in Seattle
SHRR 80-050	Exempt employees

Employer

SHRR 80-060	Advertisements, publications and policies
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Legitimate Business Reason

SHRR 80-070	Good faith belief
SHRR 80-080	Verifiable information

Employer's Process

SHRR 80-090	Initial screening
SHRR 80-100	Criminal background check
SHRR 80-110	Notice to employee or applicant
SHRR 80-120	Reasonable opportunity

Retaliation Prohibited

SHRR 80-130	Individual and third party protection
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Enforcement

SHRR 80-140	Extension of implementation date
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GENERAL PROVISIONS

SHRR 80-001 Definitions

1. "Agency" means the Seattle Office for Civil Rights.
2. "Arrest record" means information indicating that a person has been apprehended, detained, taken into custody, held for investigation or restrained by a law enforcement agency or military authority due to an accusation or suspicion that the person committed a crime.
 - a. The term includes adult and juvenile arrest records.
 - b. The term includes an arrest record for a conviction that has been the subject of an expungement, vacation of conviction, sealing of the court file, pardon, annulment, certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a prior conviction that has been the subject of a pardon, annulment or other equivalent procedure based on a finding of innocence.
3. "City" means the City of Seattle.
4. "Charging party" means a person who files an Agency charge claiming s/he was aggrieved by an alleged violation of this chapter.
5. "Commission" means the Seattle Human Rights Commission.
6. "Conviction record" and "Criminal history record information" mean information regarding a final criminal adjudication or other criminal disposition adverse to the subject, including a verdict of guilty, a finding of guilty, or a plea of guilty or nolo contendere, consistent with RCW 10.97.
 - a. The terms include adult and juvenile conviction records and criminal history record information.
 - b. "Conviction record" includes convictions for offenses for which the defendant received a deferred or suspended sentence, unless the adverse disposition has been vacated or expunged.
 - c. "Conviction record" does not include any prior conviction that has been the subject of an expungement, vacation of conviction, sealing of the court file, pardon, annulment, certificate of rehabilitation or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a prior conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

7. "Criminal background check" means requesting or attempting to obtain, directly or through an agent, an individual's conviction record or criminal history record information from the Washington State Patrol or any other source that compiles and maintains such records or information.
8. "Director" means the Director of the Office for Civil Rights.
9. "Employee"
 - a. **In general.** "Employee" shall mean any individual who performs any services for an employer, when the physical location of such services is in whole or in substantial part (at least 50% of the time) within the City.
 - b. **Job duties.** "Employee" does not include an individual whose job duties or prospective job duties include law enforcement, policing, crime prevention, security, criminal justice, or private investigation services.
 - c. **Unsupervised access.** "Employee" does not include an individual who will or may have unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment.
10. "Employer"
 - a. **In general.** "Employer" shall mean any person who has one or more employees, the employer's designee or any person acting in the interest of the employer.
 - b. **Agencies.** For purposes of this chapter, "employer" includes job placement, referral and employment agencies.
 - c. **Government.** "Employer" does not include any of the following:
 - i. The United States government;
 - ii. The State of Washington, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary;
 - iii. Any county or local government other than the City.
11. "Job applicant" means any individual who applies or is otherwise a candidate to become an employee, as defined in this Chapter.
- 12AA "legitimate business reason" exists where, based on information known to the employer at the time the employment decision is made, the employer believes in good faith that the nature of the criminal conduct underlying the conviction or the pending criminal charge either:
 - a. Will have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held; or

- b. Will harm or cause injury to people, property, business reputation or business assets; and
- c. The employer has considered the following factors:
 - i. The seriousness of the underlying criminal conviction or pending criminal charge; and
 - ii. The number and types of convictions or pending criminal charges; and
 - iii. The time that has elapsed since the conviction or pending criminal charge, excluding periods of incarceration; and
 - iv. Any verifiable information related to the individual's rehabilitation or good conduct, provided by the individual; and
 - v. The specific duties and responsibilities of the position sought or held; and
 - vi. The place and manner in which the position will be performed.

13. "Pending criminal charge" means an existing accusation that an individual has committed a crime, lodged by a law enforcement agency or military authority through an indictment, information, complaint or other formal charge, where the accusation has not yet resulted in a final judgment, acquittal, conviction, plea, dismissal or withdrawal. It includes adult and juvenile pending criminal charges.

14. "Respondent" means any employer who is alleged or found to have committed a violation of this chapter.

15. "Tangible adverse employment action" means a decision by an employer to reject an otherwise qualified job applicant, or to discharge, suspend, discipline, demote or deny a promotion to an employee.

SHRR 80-010 Effect on other laws

- 1. **In general.** This Ordinance shall not be interpreted or applied to diminish or conflict with any requirements of state or federal law. See SMC 14.17.030(A)
- 2. **State or federal requirements.** An employer may perform a criminal background check on a job applicant or employee, or require criminal history information from a job applicant or employee, to the extent that the employer is required to do so by state or federal law or regulations.

SHRR 80-020 Practice where rules do not govern

If a matter arises in administering the Ordinance that is not specifically governed by these rules, the Director shall, in the exercise of his or her discretion, specify the practices to be followed.

SHRR 80-030 Construction of rules

These rules shall be liberally construed to permit the Department to accomplish its administrative duties and to secure the just and efficient determination of the merits of all charges and complaints received by the Department.

EMPLOYEE

SHRR 80-040 - Substantial part of services in Seattle

1. **Employee location.** An employee performs a substantial part of his or her services in Seattle if the employee works at least 50% of the time in Seattle or if the employer or employee reasonably expects the employee to work at least 50% of the time in Seattle.
2. **Employer location.** The Ordinance applies to employees who perform 50% or more of their employment services in Seattle regardless of the location of their employer.
3. **Stopping in Seattle.** The Ordinance applies to employees who stop in Seattle for work purposes to perform 50% or more of their employment services in Seattle.
4. **Seasonal employees.** The Ordinance applies to seasonal employees who perform 50% or more of their employment services in Seattle over the course of employment with a single employer.
5. **Temporary employees.** The Ordinance applies to temporary employees who perform 50% or more of their employment services in Seattle over the course of their temporary employment with a single employer. A temporary worker supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, shall be an employee of the staffing agency for all purposes under the Ordinance.

SHRR 80-050 Exempt employees

1. **In general.** Individuals who fall under the following categories are not “employees” under the Ordinance:
 - a. **Law enforcement.** Law enforcement includes any public employee whose primary function is enforcing criminal laws for the City of Seattle. See RCW 43.101.010.
 - b. **Policing.** Policing is activity by a public officer to enforce the public order and make arrests for offenses under the laws of the City of Seattle. See SMC 12A.02.
 - c. **Crime Prevention.** Crime Prevention includes any public officer whose primary function is to deter crime, enforce laws and maintain criminal justice.

- d. **Security.** Security includes any individual who is licensed or required to be licensed as a “security guard” under Washington State law and who would be typically referred to as any of the following:
 - i. Security officer or guard;
 - ii. Patrol or merchant patrol service officer or guard;
 - iii. Armed escort or bodyguard;
 - iv. Armored vehicle guard;
 - v. Burglar alarm response runner; or
 - vi. Crowd control officer or guard. See RCW 18.170.
- e. **Criminal justice.** An individual who is engaged in “criminal justice” is any public employee or officer whose primary function is to deter or mitigate crime, or sanction those who violate laws with criminal penalties and/or rehabilitation efforts.
- f. **Private investigation services.** An individual who is engaged in “private investigation services” is any person who is licensed or required to be licensed under the laws of Washington State for the purpose of investigation, escort or bodyguard services, or property loss prevention activities. See RCW 18.165.010.
- g. **Unsupervised access to developmentally disabled persons, vulnerable adults or children under sixteen years of age.**
 - i. **In general.** An individual who may be subjected to a background check under RCW 43.43.830-845 is not an employee under the Ordinance.
 - ii. **Unsupervised access** means not in the presence of:
 - 1. Another employee or volunteer who is from the same business or organization as the applicant or employee and who is qualified and authorized to work with developmentally disabled persons, vulnerable adults or children; or
 - 2. Any relative or guardian of the developmentally disabled persons, vulnerable adults or children to which the applicant or employee has access during the course of his or her employment or involvement with the business or organization. RCW 43.43.830.
 - iii. **Unsupervised access** does not include incidental contact.
 - iv. **Incidental contact** means minor or casual contact in an area accessible to and within visual or auditory range of others and includes passing a person while walking down a hallway. Incidental contact does not include being alone with a developmentally disabled person, vulnerable adult, or child for any period of time in a location that is not within the visual or auditory range of others. See RCW 43.43.830.

- v. **Developmentally disabled** includes a person who has a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, another closely-related neurological or intellectual condition or a condition that requires treatment similar to that required for individuals with intellectual disabilities, and the condition:
 - 1. Originates before the individual attains age eighteen; and
 - 2. Continues or can be expected to continue indefinitely; and
 - 3. Constitutes a substantial limitation to the individual. See RCW 71A.10.020; WAC: 388-823-0420.
 - vi. **Vulnerable adult** includes a person:
 - 1. Who lacks the functional, mental, or physical inability to care for himself or herself; or
 - 2. Who has a legal guardian under chapter 11.88 RCW; or
 - 3. Who has a developmental disability as defined under RCW 71A.10.010; or
 - 4. Admitted to any Facility; or
 - 5. Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under Washington state law; or
 - 6. Receiving services from an Individual Provider; or
 - 7. Who self-directs his or her own care and receives services from a personal aide under RCW 74.39.050. RCW 74.34.020; RCW 43.43.830.
 - vii. “Facility” means residences licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers’ homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the Washington Department of Social and Health Services. RCW 74.34.020(5)
 - viii. “Individual Provider” means a person who is under contract with the Washington Department of Social and Health Services to provide services in the home under chapter 74.09 or 74.39A RCW. RCW 74.34.020(9).
2. The Ordinance does not apply to employees who are exempt under this rule.

EMPLOYER

SHRR 80-060

Advertisements, publications and policies

1. **In General.** An employer shall not advertise, publicize or implement any policy or practice that automatically or categorically excludes all individuals with any arrest or conviction records from employment positions covered by the Ordinance. SMC 14.17.020(A).
2. **Categorical Exclusion.** An advertisement, publication or policy is a categorical exclusion if it requires or appears to require an applicant or employee to have no criminal history or no criminal history of a specific nature.
3. Categorical exclusions include, but are not limited to, phrases such as “No criminal background,” and “Felons need not apply.”
4. An employer may advertise and inform employees and applicants that, after an initial screening, the employer will conduct a criminal background check.

LEGITIMATE BUSINESS REASON

SHRR 80-070 **Good faith belief**

1. To hold a good faith belief, an employer must demonstrate consideration of both:
 - a. Whether the conduct or pending criminal charge will:
 - i. Have a negative impact on the employee’s or applicant’s fitness or ability to perform the position sought or held; or
 - ii. Cause harm or injury to people, property, or business assets; and
 - b. Factors (a) through (f) in the Ordinance under the definition of “legitimate business reason.” See, e.g., SHRR 80-001(12); SMC 14.17.010.

SHRR 80-080 **Verifiable information**

1. **In general.** Verifiable information is any information produced by the applicant or employee, or produced on his or her behalf, with respect to his or her rehabilitation or good conduct.
2. This information includes, but is not limited to:
 - a. A written or oral statement from the applicant or employee; or
 - b. A written or oral statement from a member of the judiciary or law enforcement, parole or probation officer or person who provides similar services; or
 - c. A written or oral statement from a member of the clergy, counselor, therapist, social worker, community or volunteer organization or person or institution who provides similar services; or
 - d. A certificate of rehabilitation; or
 - e. A certificate of completion or enrollment in an educational or vocational training program, including apprenticeships programs; or
 - f. A certificate of completion or enrollment in a drug or alcohol treatment program; or

- g. A certificate of completion or enrollment in a rehabilitation program.

EMPLOYER'S PROCESS

SHRR 80-090 Initial screening

An initial screening consists of a review of an applicant's qualifications to ensure that the applicant possesses the minimum qualifications that are necessary for the job.

SHRR 80-100 Criminal background check

An employer shall not request an applicant's criminal history information prior to the initial screening, except for employment positions exempted from this Ordinance.

SHRR 80-110 Notice to employee or applicant

1. **In general.** Before taking any tangible adverse employment action solely based on an applicant's or employee's criminal conviction record, the conduct relating to an arrest record or pending criminal charge, the employer shall identify to the applicant or employee the record(s) or information on which they are relying and give the applicant or employee a reasonable opportunity to explain or correct that information. SMC 14.17.020(F).
2. An employer shall inform the applicant or employee of the records or information on which the employer is relying in a reasonable manner most likely to reach the applicant or employee in the shortest amount of time.

SHRR 80-120 Reasonable opportunity

1. **In general.** An applicant has had a reasonable opportunity to respond, correct or explain the records or information under SMC 14.17.020(F) and (G) when the employer can demonstrate that the employer has:
 - a. Informed the applicant or employee of the records or information on which the employer will rely, including the entire results of the background check; and
 - b. Explained to the applicant on which part(s) of the records or information the employer is relying; and
 - c. Given the applicant or employee a fair chance to review the records or information; and
 - d. Provided the applicant or employee with the name, address and telephone number of the outside agency that supplied the report; and
 - e. Provided notice to the applicant or employee of the individual's right to dispute the accuracy or completeness of any records or information the agency furnished; and

- f. Given the applicant or employee an opportunity to provide accurate records or information if the applicant or employee responds that the records or information are inaccurate; and
 - g. Given the applicant or employee an opportunity to provide an explanation as to the individual record or information on which the employer is relying as well as verifiable information related to the individual's rehabilitation or good conduct.
2. **Opportunity to correct errors in a criminal history report.** If an employer receives information from an applicant or employee that is inconsistent with the information the employer receives in a criminal history report, the employer shall give the applicant or employee an opportunity to correct errors by following the process outlined in SHRR 80-070 through SHRR 80-120 before taking any adverse action. This opportunity to correct errors in a criminal history report is not applicable where the employee or applicant intentionally misrepresents information to the employer.
3. **Time.** The employer must hold open the position for at least two business days after notifying the applicant or employee of the employer's intent to make an adverse employment decision under the Ordinance. The employer may hold open the position for longer than two business days.

RETALIATION PROHIBITED

SHRR 80-130 Individual and third party protection

The Ordinance's protections for exercise of rights and prohibition against retaliation shall extend to any person who exercises any right protected under the Ordinance, including any person who has helped or encouraged another person to exercise any right under the Ordinance.

ENFORCEMENT

SHRR 80-140 Extension of implementation date

The Director will extend the implementation date for an employer on a case-by-case basis. The employer must submit a request to the Director in writing and provide: a description of the changes necessary for compliance with the Ordinance; a process for adopting the changes; and a timeline for implementation. The Director will review the request and respond in writing within ten business days.