



December 30, 2013

The Honorable Bernard "Jack" Young  
and Members of the Baltimore City Council  
City Hall  
100 N. Holliday Street, Room 406  
Baltimore, Maryland 21202



**Re:** City of Baltimore Council Bill, 13-0301  
"Ban the Box" – Fair Criminal-Record Screening Practices

Dear Council President and Members of the City Council:

The above identified City Council Bill does not apply to the Mayor and City Council of Baltimore or any of its sub-agencies ("City") and has no immediate direct impact on City hiring practices. See City of Baltimore Council Bill, 13-0301 ("Bill"), Proposed Art. 11, § 14-1 (I)(2). As the Bill states, the City has a fair policy that governs its employment practices for conducting criminal background investigations on applicants for employment. See Bill, Proposed Art. 11, § 14-2(A)(7). While the Department of Human Resources ("DHR") is generally in support of this Bill, the Council may want to consider addressing certain perceived inconsistencies in the intent and language. Additionally there are possible inconsistencies with City policies, requiring private employers to go beyond the measures adhered to by the City.

DHR believes the language "if the arrest or accusation is not then pending and did not result in a conviction" creating the exceptions to the general prohibitions set forth in Sections 14-6(1) and (2) of the Bill is confusing and will be difficult for a covered employer to apply as they attempt to comply with the law. In general, a covered employer is prohibited from making any inquiry or requiring self-disclosure of any arrest or criminal accusation. See *Id.* In circumstances involving "proposed employment", it appears that voluntary disclosure is the only means by which a covered employer would know if the exception was applicable and inquiry was permitted prior to extending a conditional offer. Thus, the general prohibition limits the exception to such an extent that it is rendered useless to a covered employer. There may be some application as it relates to current employees, where a covered employer can require self-disclosure if the exceptions criteria are met. *Id.*

As it relates to continued employment status, however the Legislation is inconsistent with established City policy. Current City policy requires self-disclosure by City employees in all positions of any charge, arrest or conviction while employed by the City for any felony or misdemeanor or any traffic offence that involves the use of drugs or alcohol or that carries a potential penalty of incarceration. The City is also permitted to take appropriate action based

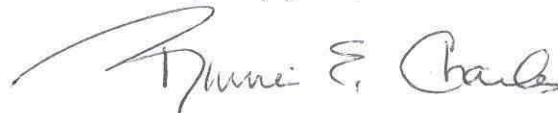
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upon the self-disclosure or when the City becomes aware of information that the employee was required to self-disclose. Under Section 14-6(2) a covered employer is prohibited from requiring self-disclosure where the arrest or criminal accusation does not result in a conviction, which is more restrictive than the City's current policy which requires self-disclosure of arrests and charges regardless of their final disposition.

DHR also has concerns that language in sections 14-7(A) and (B) may be perceived as internally inconsistent as well as inconsistent with the statements describing the intent of the Bill. Subsection (B) suggests that if an interview is conducted a covered employer is then permitted to make inquiry and gather information concerning the applicant's criminal record. *See* Bill, Proposed Art. 11, § 14-7(B). Allowing a covered employer to make inquiry into an applicant's criminal record at this point appears consistent with the stated purpose of the Bill.<sup>1</sup> Subsection (A) however, appears to establish that no such activity may be carried out by the covered employer until a conditional offer is extended. The language in subsection (B) has little meaning in light of the conditions set forth in subsection (A). Under current City policy a criminal background check is permitted for all finalist for a position not just the candidate to whom a conditional offer is extended.

Finally, the imposition of criminal penalties is significantly more onerous on private employers and different than other penalties that would be imposed for violations of other laws enforced under Baltimore City's Community Relations Article. *See* Bill, Proposed Art. 11, § 14-16. In that regard, civil penalties may be more in keeping with the enforcement provisions of the Community Relations Article.

Very truly yours,



Ronnie E. Charles, Director  
Department of Human Resources

cc: The Honorable Stephanie Rawlings-Blake  
Alexander Sanchez, Chief of Staff  
Mary Tally, Deputy Director, DHR  
LaTonya Bryant, Chief of Staff, DHR

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<sup>1</sup> The preamble to the Bill states "For the purpose of . . . ; prohibiting certain employers from conducting a criminal-record check or otherwise inquiring into an applicant's criminal record until after the conclusion of an initial interview; . . ."