

MEMORANDUM

To: Mayor Michael A. Nutter
Everett Gillison, Chief of Staff

From: Albert L. D'Attilio, Esq., Director of Human Resources

Subject: Criminal Records Background Screening and Hiring Policy

Date: November 10, 2015

The purpose of this report is to clarify the City of Philadelphia's policy on hiring returning citizens and to explain the advancements we have made during your Administration. This memorandum will show that the City's policy and procedures successfully balance the rights of the returning citizen-applicant and our policy of promoting re-entry with our need to exercise due diligence necessary to ensure the safety and security of our citizens and our workforce.

Mayor's Executive Order 1-05

On January 20, 2005, Mayor John Street issued Executive Order 1-05 that restricted the performance of background investigations to candidates that have received a conditional offer of employment. Requiring a conditional offer of employment to be provided to a candidate prior to initiating a background investigation is a best practice that is not required by any law.

The Executive Order also requires that the results of the investigation be kept in a separate, confidential file. Only select, trained Human Resources Professionals have access to the background investigation reports and those individuals are required to sign a confidentiality agreement.

Ban the Box

On March 14, 2011, the Office of Human Resources removed the criminal conviction question from our official City application. We took this action before the City's Fair Criminal Record Screening Standards Ordinance was enacted and months before it became effective. The Office of Human Resources has done significant training on these requirements. We have had Chief of Staff Everett Gillison address the HR Managers on the issues associated with re-entry.

Perhaps one interesting consequence of no longer asking applicants about convictions is that the Office of Human Resources can no longer determine to what extent our applicants or employees have criminal histories.

The Pennsylvania Criminal History Record Information Act and the “Green Factors”

The Pennsylvania Criminal History Record Information Act, 18 Pa.C.S.A. § 9125, restricts an employer’s use of criminal history to only felony and misdemeanor convictions that relate to the applicant’s suitability for employment in the position for which he or she has applied. The City’s policy and practices meets and exceeds the provisions of the Act.

In 2013, the Office of Human Resources revised the disqualification process to provide candidates with a better opportunity to address a hiring department’s concerns about his or her background prior to the department requesting the candidate be removed from consideration. Departments are now required by Civil Service Regulation 10.09, to inform the candidate of its intent to request disqualification and to provide the candidate a reasonable opportunity to respond to those concerns prior to submitting a removal request to the Director of Human Resource. Civil Service Regulation 10.09 provides:

10.093 – Upon satisfaction of the requirements of Regulation 10.0943 and upon the written request of an Appointing Authority, the [Human Resources] Director may, at his or her discretion, remove the name of an eligible from an eligible list for any of the following reasons:

10.093-1 - Felony or misdemeanor convictions in this state or elsewhere which relate to the applicant’s suitability in such a way as to preclude them from employment in the position for which they applied and/or are being considered.

10.094 – Process for Removal of an Eligible from an Eligible List

10.0943 – An Appointing Authority requesting that an eligible be removed from an eligible list pursuant to Regulation 10.093 must first provide the eligible notice of the intended request and also provide the eligible an opportunity to respond in writing. Such written notification to the eligible shall plainly and clearly state why the removal action will be requested and advise the eligible of her or his opportunity to contest this decision with the Appointing Authority. Eligibles will be afforded a minimum of five (5) business days to respond with information that they believe renders the Appointing Authority’s decision erroneous and/or inappropriate.

CITY OF PHILADELPHIA

Office of Human Resources

Once the Appointing Authority has provided the eligible candidate with notice of the intended request to remove his or her name from the eligible list and an opportunity for the eligible to respond in writing, the Appointing Authority may submit the removal request to the Director of Human Resources. The removal request must include:

- (a) Documentation supporting the request for removal of the eligible's name;
- (b) A copy of the written notification to the eligible of the Appointing Authority's intent to request the removal of her or his name from the eligible list; and
- (c) A copy of the eligible's response to the Appointing Authority or a statement certifying that the eligible failed to respond to the Appointing Authority.

Upon receipt of this documentation, the Director of Human Resources will render a decision regarding the approval or denial of the Appointing Authority's request. The decision of the Director will be final.

Every candidate with a criminal conviction is assessed individually and only after a conditional offer of employment has been provided to the candidate. Only the Director of Human Resources can remove a candidate from a certification or eligible list because of a prior criminal conviction. Those decisions are made only after a thorough review of the individual's conviction history, the hiring department's justification for requesting the removal and the candidate's response to the department's pending request. In evaluating these requests, I consider:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- The recency of the latest conviction;
- Age at the time of conviction, or release from prison;
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense or conduct;
- Evidence of rehabilitation efforts, e.g., education/training;
- Employment or character references and any other information regarding fitness for the particular; and

CITY OF PHILADELPHIA

Office of Human Resources

- To what extent the conviction relates to the suitability of the applicant for the specific position for which he or she has applied.

I also consider whether the position under consideration has:

- Significant Unsupervised Public Contact
- Significant Supervised Public Contact
- Minimal Supervised Public Contact
- Handles Confidential Data
- Safety Sensitive Positions
- Sworn Testimony Required
- Driving Position
- Receipt and Processing Cash
- Financial Agreements with Customers
- Inspection of business or construction
- Access to Controlled Substances

I can assure you that relatively few individuals are not hired by the City of Philadelphia because of a criminal record. Generally, those individuals not hired are prohibited by law from being employed in the position they seek. For example, the Child Protective Services Law prohibits individuals with certain criminal histories from working with children. Those prohibitions apply to many of our positions in Parks and Recreation, the Department of Human Services and the Free Library. Other individuals with certain criminal convictions are prohibited by the TSA from working at the Airport. In addition, sound risk mitigation principles may limit an applicant's suitability to work in our law enforcements agencies, such as the Police Department and the Philadelphia Prisons System. In all other situations where an applicant's past history is determined to render the individual unsuitable for a particular position, that decision not to hire is made only after careful, individualized assessment that includes both the hiring department's justification and the candidate's response.

The foregoing discusses the City's efforts to ensure that returning citizens are given every opportunity to compete successfully for City employment. It must also be noted that during the first 33 months of the Administration¹, the City hired 390 returning citizens into permanent, full-time, civil service positions, with benefits (see chart, below)². The Streets Department, with a long history of employing returning citizens, hired 152 of those 390 employees. In 2008, the Water Department worked with the Office of Human Resources to create a pathway to employment for those citizens returning through RISE. That pathway was created by accepting the RISE training

¹ From June, 2008 through September 2010, the City hired 2908 full-time civil service employees.

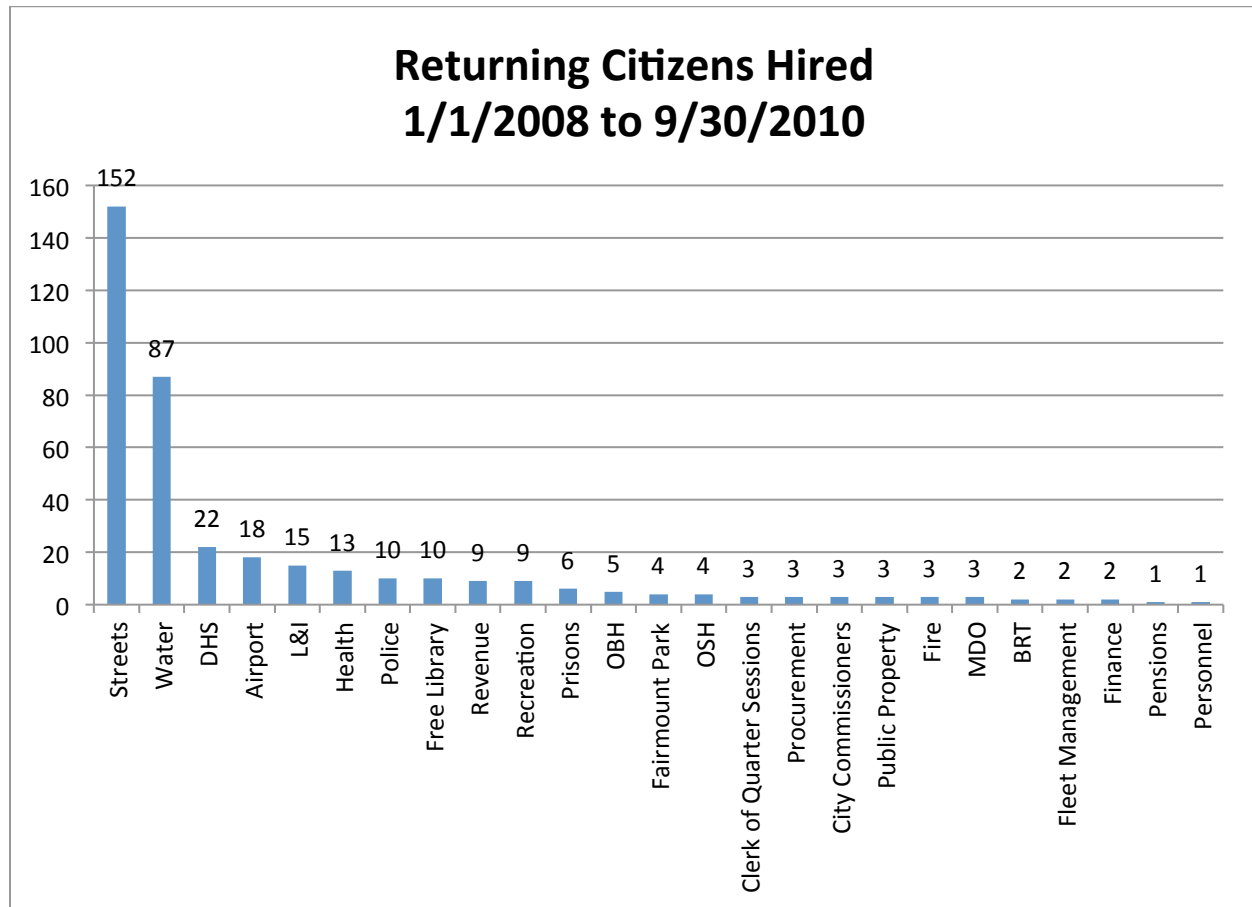
² Because the City of Philadelphia no longer asks candidates about any convictions they may have, updating this report is not possible at this time.

CITY OF PHILADELPHIA

Office of Human Resources

program as a qualifying prerequisite for the Water Operations Repaid Helper position. The Water Department hired 87 returning citizens during the first 33 months of the Administration.

The Streets Department and Water Department should be acknowledged for their commitment to employing returning citizens.



Professional Services Contracts

City contracts generally do not ban the employment of returning citizens. Some work locations, however, such as the prisons, the airport, recreation centers, libraries, etc., have particular security requirements that may result in a determination that employment of a returning citizen at that location may not be appropriate. The City contracts give those agencies discretion, so that City officials can appropriately monitor security needs and take appropriate actions in appropriate situations while also promoting the hiring of returning citizens as much as reasonably possible in positions where this is not inappropriate. For example, the Administration would generally want to prohibit a contractor or subcontractor from hiring a convicted sex offender to work

CITY OF PHILADELPHIA

Office of Human Resources

with residents of the Youth Study Center or emergency shelters. This is a management issue that requires careful consideration and the balancing of a number of interests. There are also legal requirements that the City must uphold, including some relating to work with children and others relating to work at the airport.

The Facility Manager for the Criminal Justice Center is the Sheriff. Employees and prospective employees of contractors who wish to work in the CJC must be approved by the Sheriff before they can work in the Justice Center.

It should be noted that Team Clean has hired from the City of Philadelphia's RISE Program for both MSB and OPB and have described these employees as dependable.

I hope the foregoing is informative. I am available to answer any questions you may have about the City's hiring policies and practices.