



State of North Carolina

ROY COOPER
GOVERNOR

August 18, 2020

EXECUTIVE ORDER NO. 158

FURTHERING FAIR CHANCE POLICIES IN STATE GOVERNMENT EMPLOYMENT

WHEREAS, N.C. CONST. art III, § 5(4) provides that the undersigned “shall take care that the laws be faithfully executed”; and

WHEREAS, N.C. Gen. Stat. § 143B-4 establishes that the undersigned “shall be responsible for formulating and administering the policies of the executive branch of the State government”; and

WHEREAS, pursuant to N.C. Gen. Stat. § 147-12(a)(1), the undersigned must “supervise the official conduct of all executive and ministerial officers”; and

WHEREAS, pursuant to N.C. Gen. Stat. § 126-1, the undersigned is the head of the state’s personnel administration system and has the general authority to implement personnel management criteria, standards, and guidelines that are “based on accepted principles of personnel administration” and apply “the best methods as evolved in government and industry”; and

WHEREAS, an estimated 70 million people in the United States, almost one in three adults, have prior arrests or convictions; and

WHEREAS, more than 1.7 million people in North Carolina have a criminal record and may face employment discrimination; and

WHEREAS, a criminal record by itself is not indicative of an applicant’s job performance, competence, or ability; and

WHEREAS, access to employment opportunities significantly decreases the chances of recidivism; and

WHEREAS, adverse employer treatment on the basis of criminal record status has negative emotional and psychological impacts, increases recidivism, inhibits self-sufficiency, and curtails economic growth and development; and

WHEREAS, 35 states and over 150 cities and counties, including over 10 cities and counties in North Carolina, have adopted fair chance policies to increase employment opportunities for individuals with criminal records; and

WHEREAS, the undersigned has found that the State's interests are well-served in combatting discrimination, harassment, and retaliation, while recruiting and retaining talented state employees; and

WHEREAS, additional action is necessary to ensure that individuals with criminal records are not discriminated against when state government employment decisions are rendered.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Purpose

It shall be the policy of the Office of the Governor and State Agencies as defined herein to promote workforce development and render decisions regarding employment benefits, employment classification, hiring, promotion, leave, reallocation, reinstatement, salary, transfer or other similarly significant employment matters on the basis of merit.

Section 2. Definitions

- a. "Guidance": A statement within the scope of one or more of the sub-subdivisions of N.C. Gen. Stat. § 150B-2(8a)a-1.
- b. "Employment Decision": An employer decision regarding a position requiring a job application.
- c. "State Agency": Any North Carolina department, agency, board, commission, or committee for which the undersigned has oversight responsibility.

Section 3. State Agency Responsibilities

- a. A State Agency is prohibited from inquiring into an individual's criminal history during the initial stages of an Employment Decision process and shall remove criminal history questions from its employment applications.
- b. When making an Employment Decision, a State Agency is prohibited from considering the following: (i) expunged or pardoned convictions, (ii) charges or convictions that do not relate to the underlying employment matter, (iii) arrests not resulting in a conviction, or (iv) charges resulting in dismissal or not guilty.
- c. State Agencies may conduct a background check, inquire into, or consider a desired candidate's criminal history at a later point in the Employment Decision process, but not prior to the completion of the initial job interview for the candidate.
- d. State employment decisions shall not be based on the criminal history of an individual unless that criminal history is demonstrably job-related and consistent with business necessity associated with the position, or if state or federal law prohibits hiring an individual with certain criminal convictions for a particular position.
- e. Subject to Sections 3(a) - 3(d) of this Executive Order, unless prohibited by state or federal law, including, but not limited to, the Fair Credit Reporting Act ("FCRA") and the Prison Rape Elimination Act ("PREA"), a State Agency shall provide an applicant with a copy of the applicant's criminal record and a copy of "Summary of Your Rights Under the Fair Credit Reporting Act," if the State Agency obtains a copy of the record during the Employment Decision process. A State Agency shall also allow an applicant with a criminal record a reasonable opportunity to explain the circumstances surrounding their relevant conviction(s) and provide any proof of rehabilitation, including a certificate of relief.
- f. This Section shall not apply to positions in which a criminal conviction would legally preclude the person from employment in the particular job applied for by the applicant.

- g. All State Agencies shall comply with Section 3 of this Executive Order by November 1, 2020. At a minimum, the State Agencies shall include the following:
 - i. Establish a process for State Agency positions subject to this Executive Order. Consistent with this process, a State Agency may conduct a background check, and inquire into or consider a desired candidate's criminal history only after completing a job interview in the employment decision process; and
 - ii. Set forth criteria considering an applicant's criminal history following the completion of a job interview and any related background checks. Such criteria shall be informed by the U.S. Equal Employment Opportunity Commission's Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act. The Office of State Human Resources ("OSHR") will provide guidance to aid in the development of these standards.
- h. The North Carolina Department of Administration ("DOA") shall study the feasibility of implementing a fair chance hiring policy that would extend to businesses that contract with the state. In conducting this study, DOA should take action to better understand at least the following:
 - i. The hiring policies of businesses that currently contract with the state;
 - ii. Training that would need to be offered to state contractors to assist them in effectively implementing a fair chance hiring policy;
 - iii. The means by which a fair chance hiring policy for state contractors would be enforced; and
 - iv. The impact a state contractor fair chance hiring policy would have, not only for businesses, but for justice-involved individuals as well.

DOA shall submit a report on its findings to the Office of the Governor by January 31, 2021.

Section 4. OSHR Responsibilities

- a. OSHR shall amend the state application for employment to support the requirements of the Executive Order by November 1, 2020.
- b. OSHR shall ensure all relevant State Agency managers and staff understand their obligations under this Executive Order and provide training to assist State Agencies and State Agency personnel in implementing this Executive Order.
- c. Agencies are responsible for reporting data related to this Executive Order to OSHR as requested. OSHR shall submit a report with this data to the Governor's Office and the State Reentry Council Collaborative annually.
- d. OSHR shall address any other matters to ensure State Agency compliance with this Executive Order.

Section 5. Miscellaneous

- a. This Executive Order does not create a private right of action.
- b. This Executive Order shall not be interpreted to supersede or preempt federal or state laws, rules or regulations.
- c. This Executive Order shall not apply to positions in which a criminal conviction precludes the person from employment in the particular job applied for by the applicant, including but not limited to positions: 1) requiring a security clearance or having access to sensitive public safety and security information; 2) requiring certification by the NC Criminal Justice

Education and Training Standards Commission or the NC Sheriffs' Education and Training Standards Commission; and 3) positions subject to PREA.

- d. State entities not subject to the undersigned's oversight, along with counties, municipalities, political subdivisions, local government agencies, and private entities, are encouraged but not required to comply with this Executive Order.
- e. Unless otherwise provided, this Executive Order supersedes and rescinds any previous Executive Order to the extent that they conflict.
- f. Unless otherwise provided, this Executive Order is effective immediately and shall remain in effect until amended or rescinded by future Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 18th day of August in the year of our Lord two thousand and twenty.



Roy Cooper
Governor

ATTEST:



Rodney S. Maddox
Chief Deputy Secretary of State

