



REPORT
FROM

THE PERSONNEL
DEPARTMENT

TO: Personnel and Animal Welfare Committee	DATE September 28, 2020
REFERENCE: Motion on How to Hire For City and County Jobs without Consideration of an Applicant's Legal status	COUNCIL FILE
SUBJECT: PERSONNEL DEPARTMENT'S REPORT BACK REGARDING LEGAL RIGHT TO WORK	

RECOMMENDATION: That the City Council receive and file this report.

BACKGROUND:

On July 29, 2020, the Personnel & Animal Welfare Committee passed a motion which requires the Personnel Department to prepare a report with a list of City and County jobs that have a legal status requirement, in order to begin the conversation of how to hire for these jobs without consideration of an applicant's legal status. (Council File No. 20-0942)

DISCUSSION:

All jobs within the City and County require an individual to have authorization to work in the United States. Under federal law, it is unlawful for an employer knowingly to hire an individual who is unauthorized to be employed in the United States, or to continue to employ that individual with the knowledge that his or her employment is unauthorized. (8 U.S.C. §1324a)

FINDINGS:

The Immigration Reform and Control Act of 1986 (IRCA), which was signed on November 6, 1986 by President Reagan prohibits the employment of undocumented immigrants and requires all employers to implement an "employment verification system." The law also adopted penalties for employers who illegally employ undocumented immigrants or fail to comply with the verification procedures for all employees hired after the law's effective date. All new employees who are hired on or after November 7, 1986, are required to submit proof of 1) identity and 2) a legal right to work in the United States. The federal law does not provide any exceptions to the requirement.

The City is required, under federal law, to verify if an individual is authorized to work in the United States. Employers, including governmental bodies, must verify the identity and employment authorization for any non-citizen seeking employment in the United States when hiring or continuing to employ the individual. (8 CFR Section 274a.2). The City has no authority to eliminate the authorization requirement. It does not matter what position is being considered. Further, consistent with federal law, the Civil Service Rule 3.1 provides an applicant must have a legal right to work to be qualified for examination. The power of Naturalization is exclusively in Congress. (*Chirac v. Lessee of Chirac (1817) 15 U.S. 259, 269*). Therefore, any changes to the IRCA would require Congressional approval as well as a change in federal law.

WENDY G. MACY
General Manager