

CRIMINAL HISTORY AND EMPLOYMENT

FACT SHEET



Civil Rights
Department
STATE OF CALIFORNIA

The Fair Chance Act: reducing job barriers for people with conviction histories

The Fair Chance Act limits employers' ability to make employment decisions based on job applicants' conviction histories (also known as criminal records). Just like anyone else, people with criminal histories need access to job opportunities to support themselves and their families, improve their community ties, and create opportunities for independence. The Fair Chance Act is part of the California Fair Employment and Housing Act, a law the Civil Rights Department enforces. Applicable rules can be found at California Government Code section 12952 and California Code of Regulations Title 2 section 11017.1.

Whom does the Fair Chance Act cover?

Workers: The law applies to job applicants, people who start work before their employer runs a background check, employees up for a promotion, and employees who are otherwise undergoing a background check.

Employers: The Fair Chance Act applies to public employers and private employers that have five or more employees. This includes union hiring halls, labor contractors, and temporary employment agencies.

- **Exceptions:** The law does not apply to farm labor contractors, state criminal justice agencies, certain positions at health care facilities, or any position where an employer is required by law to conduct background checks or restrict employment based on criminal history.

But note: California's Fair Employment and Housing Act makes it unlawful for any employer to use criminal history in making employment decisions if it negatively affects – or has an “adverse impact” on – people because of their legally-protected characteristics, such as race, without a legitimate business purpose. For example, in hiring for a job exempt from the Fair Chance Act, an employer could not deny an applicant based on criminal history if that practice denied job applicants of a particular race more than applicants of other races, unless the employer could prove that the practice was necessary for safe and effective business operations.

Before a job offer

The Fair Chance Act generally makes it against the law for employers to ask about or consider a job seeker's conviction history before offering them a job. This means most employers cannot:

- Ask about conviction history on job applications
- Run a background check or do an Internet search for criminal history before making a job offer
- Make statements in job postings that exclude people with criminal histories (such as job advertisements that say “No Felons” or “Must Have Clean Record”)

*If you see job ads like this,
report them to CRD at
bit.ly/CRD-Discriminatory-Notices*

After a job offer: off limits information

After making a conditional job offer, employers are allowed to run a background check. But there is certain information an employer can never consider. This includes:

- Arrests that did not result in convictions (with limited exceptions)
- Convictions that have been sealed, dismissed, expunged or statutorily eradicated (like the

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- automatic sealing of some juvenile court records when a person becomes an adult)
- Charges or convictions that have been dismissed, sealed, or eradicated after a person successfully completed pretrial or posttrial diversion programs (for example, drug court or mental health court)
- Conviction history that is more than seven years old based on the date of disposition (the conviction date), date of release from prison or jail, or date of parole

Deciding whether to move forward with hiring

An employer cannot refuse to hire someone just because they have a criminal record. An employer also cannot refuse to hire someone just because they have a particular kind of conviction, such as for a violent crime or sex offense.

Instead, if something comes up on a person's background check that is of concern to the employer, the employer must do an individualized assessment before deciding not to move forward with hiring. An individualized assessment helps the employer decide if the person's conviction history has a direct and adverse (negative) relationship with the job duties of the specific position the person is applying for. As part of the individualized assessment, the employer has to consider the following factors:

1. Nature and gravity of the conviction or conduct

- For example, the person's age at the time of the conviction, the specific conduct during the incident; whether property or people were harmed; the degree and permanence of the harm; and context surrounding the conviction
- If a disability contributed to the conviction, whether a reasonable accommodation could help address future incidents, and whether the disability still exists or has been treated

- If trauma, domestic or dating violence, sexual assault, stalking, human trafficking, duress, or similar factors contributed to the conviction
2. **Time** passed since the conduct and/or since the person was released from prison or jail
 3. **Nature of the job and specific duties**, including whether the context or type of harm related to the conviction is likely to come up in the workplace

Taking back a job offer

If the employer finds a direct and adverse (negative) relationship between the person's conviction history and the job and for that reason decides to deny employment, they must let the person know in writing of their preliminary (non-final) decision to take back the job offer. The notice must include:

- A list of the conviction(s) causing withdrawal of the job offer
- A copy of the background check report
- A statement that the person has a right to respond to the notice with evidence of rehabilitation and mitigation before the employer makes a final decision to take back the job offer
- The deadline to respond to the notice with more evidence or information: At least five business days from the date the notice is received and at least ten days if the job seeker is challenging the accuracy of the background check¹

The notice may, but is not required to, explain the employer's reasons for wanting to take back the job offer. CRD encourages employers to share their reasoning with job applicants.

For examples of notices that meet the requirements of the law, visit bit.ly/Fair-Chance-Act-Toolkit

¹ If notice is not delivered in a way that confirms receipt (like regular mail), the notice is considered received five calendar days after the mail is deposited for delivery for California addresses, ten calendar days after the mailing for addresses outside of California, and twenty calendar days after mailing for addresses outside of the United States. See 2 C.C.R section 11017.01(c)(2)(E).

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Challenging an employer's decision to withdraw a job offer

After receiving a notice from the employer, the job applicant may, but is not required to, share information that might help the employer understand more about who they are, the circumstances that led to the conviction, and how their life or circumstances have changed. This is called evidence of rehabilitation or mitigating circumstances. Evidence of rehabilitation or mitigating circumstances includes information about:

- The person's age at the time of the incident that led to the conviction
- Circumstances surrounding the incident
- The person's job history and the fact that they are looking for a job
- Participation in school, job training, counseling, community service, treatment, and/or rehabilitation programs
- Successfully following the rules of probation or parole
- Whether the person is bonded under a federal, state, or local bonding program
- The likelihood that similar conduct will happen again
- Whether trauma, domestic or dating violence, sexual assault, stalking, human trafficking, duress, or similar factors contributed to the conviction
- If a disability contributed to the conviction, whether a reasonable accommodation could help address future incidents, and whether the disability still exists or has been treated

To prove this information, the person can give the employer certificates showing they participated in or finished a program (such as job training, treatment, or education); letters of support; police reports or other documents showing they survived domestic or dating violence, sexual assault, stalking, or other offenses; documents confirming their disability; and/or any other documents showing rehabilitation efforts or mitigating circumstances.

The job applicant can also challenge the accuracy of the information the employer used. This includes showing the employer there is an error on the background check.

Once the job applicant submits this information, the employer has to consider it when deciding whether the person's conviction history has a direct and adverse (negative) relationship with the job duties. This is called a reassessment.

If the job applicant does not provide more information, or if after reassessment, the employer still wants to withdraw the job offer, there are certain steps the employer has to take. The employer has to notify the job seeker in writing, describe any procedure they have to challenge or appeal the decision, and let the person know they have the right to file a complaint with the Civil Rights Department.

Not sure if an employer broke the law? Our Fair Chance Act interactive guide helps job applicants identify potential violations. For more information, visit bit.ly/CRD-FairChanceGuide

Job seekers who experience employment discrimination under the Fair Chance Act may contact CRD.

TO FILE A COMPLAINT

Civil Rights Department

calcivilrights.ca.gov

Toll Free: 800.884.1684

TTY: 800.700.2320

Have a disability that requires a reasonable accommodation? CRD can assist you with your complaint.

For translations of this guidance, visit:

www.calcivilrights.ca.gov/posters/employment