

Private Sector Fair Chance Hiring

Fair chance employment policies are designed to give people with criminal records more access to meaningful opportunities. It is based on the premise that everyone, regardless of their background, has the right to be fairly assessed for a role based on their qualifications rather than their criminal records.¹ Fair Chance Employment is good for businesses because it promotes loyalty and stability in the labor pool, boosts the economy, and helps reduce recidivism, thereby advancing public safety and community well-being.

There is not a “one size fits all” model for adopting and implementing fair chance employment policies. Businesses must consider the unique risks, needs, and opportunities when developing and adopting fair chance policies.

As your company develops its fair chance employment plan, here are eight policies, model policies, and a sample statement to consider.

1. **Use people first language.** Use descriptive terms that acknowledges humanity by including the word “people,” “person,” or “individual” – such as “people with records.”² Avoid language such as “ex-offender,” “felon,” “ex-convict,” or “inmate” that stigmatizes people with criminal records.
2. **Partner with community-based, reentry service providers to help recruit talent.** Statewide there are hundreds of community leaders who work with people with records to prepare them for the workforce and to help them find employment. Intentionally partnering with reentry partners will allow employers to find vetted, trained workers who are backed by a community leader.
3. **Broaden equal opportunity statement on job posting to include language about criminal records.**³ Ensure that applicants feel comfortable applying for the position by making it clear that the company will not automatically disqualify someone because of a criminal record. In other words, do not include language on job postings or advertisement that exclude applicants with a criminal record. See *Sample Statement* below.
4. **Remove inquiries into a criminal record from the job application.**⁴ Studies have shown that questions about a criminal record on a job application discourages people from applying

¹ Matthew Rodgers, “A Guide to Fair Chance Hiring for Employers [2023]”, available at <https://iprospectcheck.com/fair-chance-hiring/> (accessed March 12, 2023).

² National Employment Law Project (NELP), “Best Practices and Model Policies: Creating a Fair Chance Policy,” available at <https://s27147.pcdn.co/wp-content/uploads/Fair-Chance-Ban-the-Box-Best-Practices-Models.pdf> (accessed March 12, 2023).

³ Checkr Editor, “What are Fair Chance Hiring Practices?,” available at <https://checkr.com/blog/what-are-fair-chance-hiring-practices> (accessed March 12, 2023).

⁴ U.S. Equal Employment Opportunity Commission (EEOC), “Criminal Records: Tips for Small Businesses,” available at <https://www.eeoc.gov/employers/small-business/criminal-records> (accessed March 12, 2023).

for the position.⁵ Employers should not inquire about charges that did not end in conviction or were expunged at any time during the employment process. Delay the inquiry about conviction(s) until the end of the hiring process.⁶ This allows the employer to evaluate the potential employee based on their merit.

5. **Use background check companies with history of equitable reporting.** If conducting a background check, obtain the applicant’s written permission to conduct the background check. Additionally, work with background check companies that have a history providing high quality, accurate background reports.⁷ Background check companies that are certified by Professional Background Screeners Association are required to periodically submit to audits to ensure it is complying with data verification procedures and consumer protection protocol.⁸
6. **Do not disqualify a potential employee based on arrests that did not result in conviction.** Only consider convictions and pending prosecutions that are relevant to the job in question. During the individualized assessment of an applicant with a criminal record, some factors to consider are the nature of the crime, the time that has elapsed, and the nature of the job.⁹
7. **Give applicants an opportunity to explain their criminal history.** Before making an adverse employment decision, inform the applicant about the potential adverse action. Promptly provide the applicant with an opportunity to challenge the information in the background report and to provide evidence of rehabilitation. Consider reevaluating the applicant based on the additional information provided.¹⁰
8. **Invest in talent development to ensure advancement to higher level positions.** Many people with records are hired into entry-level positions. Companies should provide training and opportunities for promotion to ensure that employees can advance in the company.¹¹

There may be laws that impose additional restrictions on business. For example, the Fair Credit Reporting Act (FCRA) and Title VII of the Civil Rights Act. In addition, for guidance review the [U.S. Equal Employment Opportunity Commission’s Guidelines](#).

⁵ National Employment Law Project, ““Ban the Box” is a Fair Chance For Workers With Records,” available at <https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-Fact-Sheet.pdf> (accessed March 12, 2023).

⁶ American Civil Liberties Union (ACLU), Trone Private Sector and Education Advisory Council of ACLU, “Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company,” available at https://www.aclu.org/sites/default/files/field_document/060917-trone-reportweb_0.pdf (accessed March 12, 2023).

⁷ *Id.*

⁸ See Professional Background Screener Association, available at <https://thepbsa.org/> (accessed March 12, 2023).

⁹ EEOC, “Criminal Records: Tips for Small Businesses.”

¹⁰ *Id.*

¹¹ Lucretia Murphy, Jobs for the Future, “Moving Beyond the Box: When Fair Chance Hiring Means Advancement Not Just Employment,” available at <https://www.jff.org/points-of-view/moving-beyond-box-when-fair-chance-hiring-means-advancement-not-just-employment/> (accessed March 12, 2023).

