

New York City Human Rights Commission Fair Chance Act Fact Sheet Offers Compliance Guidance

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New York City employers must comply with the New York City Fair Chance Act, which restricts when employers can make inquiries about applicants' criminal histories and imposes additional obligations on employers. (See our articles, [New York City Enacts Ban-the-Box Legislation](#) and [Reminder: New York City Fair Chance Act, Limiting Criminal Inquiry, Effective October 27](#), for further detailed analysis of the law's requirements.)

The New York City Commission on Human Rights, the agency entrusted to enforce the law, has issued a Fact Sheet on October 27, 2015, summarizing certain aspects of the legislation and providing additional compliance information to employers and applicants/employees. Highlights include the following:

1. **Advertisements:** Employers cannot place job ads that mention arrests, convictions, or having a clean record, such as "no felons," "background check required," or "must have clean record."
2. **Background Checks:** Job applications cannot ask applicants to authorize a background check. The Commission had previously stated informally that applications should not refer to background checks.
3. **Timing and Limitations on Inquiries:** Questions regarding criminal history generally can be asked only after a conditional offer of employment has been made. The Commission confirms that there are no temporal limitations on such questions. Excepting a bar on employers asking about sealed convictions, including youthful offender or juvenile delinquent adjudications, employers can ask about any criminal convictions, no matter how old.
4. **Disqualification:** The Fact Sheet reiterates the analysis required to disqualify an applicant based on criminal history under Article 23(a) of the New York Correction Law. The following factors must be considered by an employer before deciding not to hire an applicant because of the individual's criminal record:
 - a. That New York public policy encourages the employment of people with criminal records;
 - b. The specific duties and responsibilities of the job;
 - c. The bearing, if any, of an individual's criminal record on his or her ability to do the job;
 - d. The amount of time that has passed since the events that led to the criminal conviction;
 - e. The individual's age when he or she engaged in criminal conduct;
 - f. The seriousness of the individual's conviction record;
 - g. Any positive information in the individual's favor. This includes evidence that: the individual attended school, job training, or counseling; had past employment; or is involved with his or her community. Evidence of these can include letters of recommendation from those who know the individual, such teachers, counselors, supervisors, clergy, and parole or probation officers.
 - h. If the individual has a certificate of relief from disabilities or a certificate of good conduct, an employer must presume the individual has been rehabilitated from his or her convictions.

After looking at these factors, an employer can decide to not hire the individual for one of two reasons:

- 1) A direct relationship exists between the conviction and the job at issue; or
- 2) The conviction history creates an unreasonable risk to people or property.

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Background Checks

5. *Model Form for Disqualification Analysis*: Employers can utilize either the Commission-issued model form to comply with the law's requirement to provide a written analysis to individuals as a precondition to disqualifying an individual based on criminal conviction background, or modify/adapt the form to the employer's preferred format assuming the material substance does not change.

Jackson Lewis employers are available to assist your organization with compliance with this enactment as well as the approximately 20 other state and local ban-the-box laws.

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