

Advertisement and Application: Suggested Language to Comply with the San Francisco Fair Chance Ordinance

State in all job solicitations/ads that qualified applicants with arrest and conviction records will be considered for the position in accordance with this ordinance.

Suggested language:

“Pursuant to the San Francisco Fair Chance Ordinance, we will consider for employment qualified applicants with arrest and conviction records.”

Reminders

You can **never ask** about the following:

- An arrest not leading to a conviction—except under specific circumstances identified below with respect to an unresolved arrest;
- Participation in, or completion of, a diversion or a deferral of judgment program;
- A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise made inoperative;
- A conviction or any other determination in the juvenile justice system, or information regarding a matter considered in, or processed through, the juvenile justice system;
- A conviction that is more than 7 years old (measured from the date of sentencing); or
- A criminal offense other than a felony or a misdemeanor—such as an infraction.

HOW TO COMPLY WITH THE FAIR CHANCE ORDINANCE

Is the position covered by the San Francisco Fair Chance Ordinance (FCO)?

- Do you have 5 or more employees globally and the new or promotional position is for 8 or more hours per week in San Francisco?
- Are you a San Francisco City Contractor and the new or promotional position is for 8 or more hours per week in San Francisco?

If you checked either option, the position is covered and you must follow the steps listed below:

1

Job Posting, Application & Interview

The job announcement must explicitly state that you will consider qualified applicants with arrest and conviction records for employment in compliance with the FCO.

On job applications and in examinations and/or job interviews, you cannot ask about the applicant's history of arrests or convictions. This includes statements like "Will you be able to pass a background check?"

2

When Can I Run a Background Check?

After making a conditional job offer to a candidate, you may conduct an individualized assessment of the applicant (e.g. background check) and consider the following:

- 1) The criminal conduct and how is it directly-related to the person's ability to do the job.
- 2) How long ago the criminal conduct occurred.
- 3) Evidence of the applicant's rehabilitation and other mitigating factors.

You can **never ask or consider** the following:

- An arrest not leading to a conviction—except under specific circumstances identified below with respect to an unresolved arrest;
- Participation in, or completion of, a diversion or a deferral of judgment program;
- A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise made inoperative;
- A conviction or any other determination in the juvenile justice system, or information regarding a matter considered in, or processed through, the juvenile justice system;
- A conviction that is more than 7 years old (measured from the date of sentencing); or
- A criminal offense other than a felony or a misdemeanor—such as an infraction.

3

Can I take back the conditional job offer?

If after reviewing the applicant's criminal history and conducting the above assessment, you decide not to hire the person, you must give the person:

- A copy of the background check; and
- 7 days to respond with clarifying information.

If the person submits new information, you must conduct an individual reassessment based on the new information.

If your final decision is to revoke the job offer, you must send a notice of final decision to revoke the job offer.

Sample Conditional Offer of Employment & Notice of Conviction Background Check San Francisco Fair Chance Ordinance

[Date]

Dear [Applicant Name]:

We are writing to make you a conditional offer of employment for the position of [INSERT POSITION]. Before this job offer becomes final, we will check your conviction history. The form attached to this letter asks for your permission to check your conviction history and provides more information about that background check.

After reviewing your conviction history report, we will either:

- a. Notify you that this conditional job offer has become final; or
- b. Notify you in writing that we intend to revoke (take back) this job offer because of your conviction history.

As required by the San Francisco Fair Chance Ordinance, we will NOT consider any of the following information:

- An arrest not leading to a conviction—except under specific circumstances identified below with respect to an unresolved arrest;
- Participation in, or completion of, a diversion or a deferral of judgment program;
- A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise made inoperative;
- A conviction or any other determination in the juvenile justice system, or information regarding a matter considered in, or processed through, the juvenile justice system;
- A conviction that is more than 7 years old (measured from the date of sentencing); or
- A criminal offense other than a felony or a misdemeanor—such as an infraction.

As required by the San Francisco Fair Chance Ordinance, we will consider whether your conviction history is directly related to the duties of the job we have offered you.

We will consider all of the following:

- The nature and seriousness of the offense
- The amount of time since the offense
- The nature of the job

We will notify you in writing if we plan to revoke this job offer after reviewing your conviction history. You will have an opportunity to respond before our decision becomes final. We will identify conviction(s) that concern us, give you a copy of the background check report, and allow you at least 7 business days to respond with information showing the conviction history report is inaccurate and/or with information about your rehabilitation or mitigating circumstances. We will review any information you timely submit and then decide whether to finalize or take back this conditional job offer. We will notify you of that decision in writing.

Sincerely,

[Employer]

Enclosures: Authorization for Background Check (as required by the U.S. Fair Credit Reporting Act and California Investigative Consumer Reporting Agencies Act), San Francisco Fair Chance Ordinance Notice

Sample Criminal History Individual Assessment Form

San Francisco Fair Chance Ordinance

Employer Name: _____ Applicant Name: _____
Position Applied For: _____ Date of Conditional Offer: _____
Date of Assessment: _____ Date of Criminal History Report: _____
Assessment Performed By: _____

1) Specific duties and responsibilities of the job:

[List]

2) Description of the criminal convictions and unresolved arrests. Why is the conduct is of concern with respect to the position?

Under the San Francisco Fair Chance Ordinance, the following background information may not be considered at any time:

- An arrest not leading to a conviction (except unresolved arrests).
- Participation in a diversion or deferral of judgment program.
- A conviction that has been dismissed or expunged.
- A conviction in the juvenile justice system.
- A conviction that is more than 7 years old. *Except supervision of minors, dependent adults, and persons over 65 years old.
- An offense other than a felony or misdemeanor (i.e. traffic ticket).
- Any decriminalized offense (such as some cannabis convictions).

[Describe the convictions and unresolved arrests. If any are a conduct of concern, explain why]

3) Are the actions directly-related to the applicant's ability to perform the job?

[Describe how the actions from the background report are directly related to the job duties. Does the conduct have a direct and specific negative bearing for the applicant to perform the job? Does the employment position offer the opportunity for the same offense to occur?]

3) How long ago did the criminal activity occur:

Based on the above, we are considering RESCINDING our offer of employment. If rescinding, our decision is based on the following:

[If rescinding, list/describe reasoning between specific aspects of the applicant's criminal history with risks inherent in the duties of the position]

Sample Employer Notice of Preliminary Decision to Revoke Job Offer San Francisco Fair Chance Ordinance

[Date]

Dear [Applicant]:

After reviewing the results of your background report, we have made a preliminary (non-final) decision to revoke (take back) our previous job offer for the position of [Insert Position] because of the following convictions and/or unresolved arrests:

[List convictions and/or unresolved arrests]

Attached to this notice are the following:

- A copy of your background report.
- San Francisco Fair Chance Ordinance Notice

Your Right to Respond: *You may respond to this letter before our decision to revoke the job offer becomes final. Within 7 days¹ from when you first receive this notice, you may send us:*

- Evidence of rehabilitation or mitigating circumstances
- Information challenging the accuracy of the conviction history listed above

Please send any additional information you would like us to consider to:

[Insert employer contact person's name, mailing address, email, and phone number]

Here are examples of information you may send us:

- Evidence that you were not convicted or not arrested for one or more of the offenses or charges we listed above or that the background report is inaccurate (such as the number of convictions listed).
- Facts or circumstances surrounding the above referenced convictions or unresolved arrests such as coercive circumstances, intimate physical or emotion abuse, untreated substance abuse, and untreated mental illness.
- The time that has passed since the conduct that led to conviction, unresolved arrest, or since your release from incarceration.
- The length and consistency of employment history or community involvement (such as volunteer activities) before and after the convictions or unresolved arrests.
- Employment or character references from people who know you, such as letters from teachers, counselors, supervisors, communication organizations, clergy, and probation or parole officers.
- Evidence that you attended school, job training, or counseling.
- Evidence that you have performed the same type of work since your conviction.

¹ Applicant must be allowed at least 7 business days to respond.

- Whether you are bonded under a federal, state, or local bonding program or other job readiness program.
- Any other evidence of your rehabilitation efforts, such as (i) completion of or active participation in rehabilitation programs such as anger management, alcohol, and drug treatment, (ii) evidence showing your compliance with the terms and conditions of probation or parole, or (iii) evidence showing your present fitness for the job.

We are required to review the information you submit and make another individualized assessment of whether to hire you or revoke the job offer. We will notify you in writing if we make a final decision to revoke the job offer.

Our Individualized Assessment:

We have individually assessed whether your conviction history is directly related to the duties of the job we offered you. We considered all of the following:

1. Our concern from the report was the following:

[Specify the action from the background report]

2. How long ago the conduct occurred, which was: [Amount of time passed], at what age was the last criminal activity [Insert Age] and how long ago since you completed your sentence, which was:

[Insert amount of time passed if served sentence]

3. The specific duties and responsibilities of the position of [Insert position] are to:

[List job duties]

4. How the action from the background report is directly-related to the position that you are applying for:

[Describe how the actions are directly-related to the job duties and any other concerns]

Sincerely,

[Employer contact person name]

[Employer company name]

[Employer address]

[Employer contact phone number]

Sample Employer Notice of Final Decision to Revoke Job Offer San Francisco Fair Chance Ordinance

[Date]

Dear [Applicant]:

We are following up about our letter dated [Date of notice], which notified you of our initial decision to revoke (take back) the conditional job offer.

(Please check one:)

- We did not receive a timely response from you after sending you that letter, and our decision to revoke the job offer is now final.
- We made a final decision to revoke the job offer after considering the information you submitted, which included:

[List information applicant provided]

After reviewing the information you submitted, we have determined that there

- was was not (check one) an error on your conviction history report.

We have decided to revoke our job offer because of the following convictions or unresolved arrests:

[List convictions and unresolved arrests that led to the decision to revoke offer]

Request for Reconsideration:

(Please check one:)

- We do not offer any way to challenge this decision or request reconsideration.
- If you would like to challenge this decision or request reconsideration, you may: [Specify the number of days provided for a response and describe the procedure]

Your Right to File a Complaint: If you believe your rights under the San Francisco Fair Chance Ordinance have been violated during this job application process, you have the right to file a complaint with the San Francisco Office of Labor Standards Enforcement (OLSE). To file a complaint:

- Contact the OLSE Fair Chance Unit at fco@sfgov.org or 415-554-5192.
- Go to the OLSE Fair Chance Ordinance website: www.sfgov.org/olse/fco

Sincerely,

[Employer contact person name]

[Employer company name]

[Employer address]

[Employer contact phone number]