



Fair Chance Ordinance Employer Tool Kit – Video 1 Job Announcements and Applications

Beverly Popek

Supervising Compliance Officer



Office of Labor Standards Enforcement

How to get the most out of this video

- Have you watched the FCO Overview Video?
- This is a video in a series. Watch the videos in order.
- Print the presentation slides and have them available to take notes as you watch this video.
- Print the FCO Employer Tool Kit - <https://sfgov.org/olse/fair-chance-ordinance-fco>



San Francisco Fair Chance Ordinance (FCO) Compliant Employment Process

Job Posting, Application, & Interview

- Must state that you will consider qualified applicants with arrest & conviction records for employment in compliance with the FCO.
- Can't ask about arrests or convictions.

May Conduct Background Check After a Conditional Job Offer (Optional)

- Conduct individualized assessment – Hire?
- Preliminary notice to revoke job offer.
- Reassessment if new information provided – Hire?

Revocation of Job Offer

Final notice to revoke job offer.

Hire/Promote



Compliant Employment Process



Office of Labor Standards Enforcement

The Compliant Hiring Process Applies to All Employment Determinations

The compliant FCO hiring process applies to anyone who is subject to an employment determination:

1. Job applicants
2. Current employees who you choose to conduct a background for
3. Employees who pursue promotional opportunities





Job Announcements and Applications



Office of Labor Standards Enforcement

Job Announcements



- Announcements **cannot** say that someone with arrests or convictions will not be considered, or that a background check must be “passed.”
- Announcements **must** include an affirmative statement of compliance with the FCO:

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



Job Applications

- Job applications **cannot** ask about the applicant's history of arrests or convictions.
- Employers **cannot** ask about, or inquire into, convictions or unresolved arrests until after a conditional offer of employment.





The Interview and Communications with the Candidate



Office of Labor Standards Enforcement

Language about Employment Determinations

Compliant FCO language

1. We will consider applicants for employment and employees pursuing promotions based on the qualifications and experiences that they bring to the firm, then if we choose to, we will conduct a background check after a conditional offer of employment has been made.
2. There are no automatic rejections regardless of what we see on the background findings. We will conduct a compliant FCO hiring process that includes individualized assessments and give the applicant 7 business days to provide clarification and their response.



Language about Employment Determinations

Compliant FCO language

3. We know we are compliant with the State of California Fair Chance Act and the San Francisco FCO as long as we provide the 7 business days as required under the FCO and not the 5 days required in the State of California law. The 7 days are for the applicant to provide a response to the background findings and further clarification and demonstration that they are fit for the job.

4. Ultimately, as the employer, we make the decision as to who we hire. We need to be sure to follow the required processes before making our decision.



Language about Employment Determinations

Non Compliant FCO language

1. There's no way that I will hire an applicant with this issue on their background. Now that we have conducted the background, there is no further review needed. This person is out of the running for the job.
2. I feel that this person is not fit to perform the work. Even though this issue on the background isn't directly related to the duties for the job, I don't like that this person has a criminal background.
3. Let's follow the State of California Fair Chance Act that requires 5 days for the applicant to provide a response to the background findings and further clarification and demonstration that they are fit for the job.





Background Check Prohibited Information



Office of Labor Standards Enforcement

Background Check Prohibited Information

Seven categories of information may not be considered at any time:

1. a conviction that is more than 7 years old

- a) Conviction – A record from any jurisdiction that includes information indicating that a person has been convicted of a felony or misdemeanor; provided that the conviction is one for which the person has been placed on probation, fined, imprisoned, or paroled.



Background Check Prohibited Information

Seven categories of information may not be considered at any time:

2. an arrest not leading to a conviction (except unresolved arrests)
 - a) Example: A protestor is arrested then released without being convicted of a crime.



Background Check Prohibited Information

Seven categories of information may not be considered at any time:

3. participation in a diversion or deferral of judgment program
 - a) A diversion of judgement program is a form of sentence in the criminal justice system in which the criminal offender joins a rehabilitation program, which will help remedy the behavior leading to the original arrest, allows the offender to avoid conviction. Examples of rehabilitation are community service and education.



Background Check Prohibited Information

Seven categories of information may not be considered at any time:

4. a conviction that has been dismissed or expunged
 - a) Expungement is a court-ordered process in which the legal record of an arrest or a criminal conviction is destroyed or "sealed" from state and federal record.



Background Check Prohibited Information

Seven categories of information may not be considered at any time:

5. a conviction in the juvenile justice system
 - a) The juvenile justice system is the structure of the criminal legal system that deals with crimes committed by minors (under the age of 18).



Background Check Prohibited Information

Seven categories of information may not be considered at any time:

6. an offense other than a felony or misdemeanor (i.e. traffic ticket)
 - a) Felony – typically one involving violence, more serious than a misdemeanor, and usually punishable by imprisonment for more than one year or by death (e.g. murder)
 - b) Misdemeanor – Criminal offense that is less serious than a felony and more serious than an infraction. Punishable by a fine or incarceration in a local county jail (e.g. public intoxication)



Background Check Prohibited Information

Seven categories of information may not be considered at any time:

7. Offenses that have been decriminalized
 - a) Decriminalized – The law changes so that the action is no longer a criminal offense.
 - b) Example: Cannabis



Exceptions to Prohibited Information

Employers can consider convictions or unresolved arrests older than 7 years for jobs supervising:

- Minors
- Dependent adults
- Persons 65 years or older



Exceptions to Prohibited Information

2. Employers can consider infractions (driving record) where driving is a significant part of the job
 - a) Infraction – Violation of the law that is less serious than a misdemeanor, or is a violation of rules a person is supposed to follow (speeding ticket).





Continue to Employer Tool Kit – Video 2

Initiating a Background Check After a Conditional Job Offer



Contact OLSE

Office of Labor Standard Enforcement – FCO

San Francisco City Hall

1 Dr. Carlton B. Goodlett Place, Room 430

San Francisco, CA 94102

Phone: (415) 554-5192

Fax: (415) 554-6291

Email: fco@sfgov.org

Website: www.sfgov.org/olse

FCO

<https://sfgov.org/olse/fair-chance-ordinance-fco>

