



Fair Chance Ordinance (FCO) Overview

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Background Information

- As of 2001, 34 states and over 150 cities nationwide have passed some form of Ban the Box or “fair-chance” legislation.
- San Francisco Fair Chance Ordinance (FCO) – 2014
- California Fair Chance Act – 2018



San Francisco FCO - Who is Covered?

Citywide Employers

- A company operating in the City and County of San Francisco (CCSF) with any employees working in CCSF

Covered Employers

- 5+ employees worldwide & any employees (or planned positions) in SF

Covered Employees

- Any position where the employee works/will work at least 8 hours/week in SF



San Francisco FCO - Who is Covered?

San Francisco City Contractors

- A company with a contract with the City and County of San Francisco

Covered City Contractors

- Any size & any employees (or planned positions) in SF

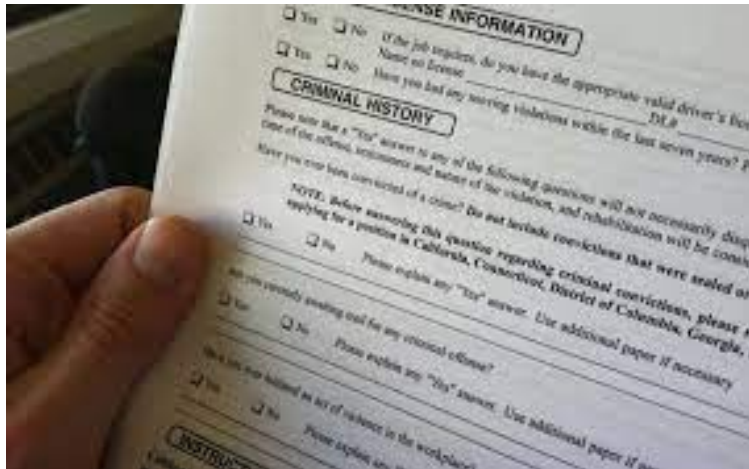
Covered Employees

- Any position where the employee works/will work at least 8 hours/week in SF



Requires a compliant hiring process

- Employers cannot ask about, or inquire into, convictions or unresolved arrests until after a conditional offer of employment.
- Use our FCO Employer Tool Kit
- Watch our FCO Employer Tool Kit Videos



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.



Exceptions to Prohibited Information

Employers can consider convictions and arrests prior to 7-year look back period for jobs supervising:

- Minors
- Dependent adults
- Persons 65 years or older

Employers can consider infractions (driving record) where driving is a significant part of the job



State and Federal Preemptions

- Federal or State laws that require background checks for certain jobs preempt the FCO.
 - Example: financial services/insurance employees



What the FCO Doesn't Do:

- FCO does **NOT** require employers to give preference to, or hire an unqualified individual with an unresolved arrest or conviction record.
- FCO does **NOT** limit employers' ability to choose the most qualified and appropriate candidate among the applicants.
- FCO does **NOT** require employers to conduct a background check.
- FCO does **NOT** prohibit employers from conducting a background check.



Contact OLSE

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