



ASURINT

BACKGROUND SCREENING SOLUTIONS

# BAN THE BOX & FAIR CHANCE LAWS

Over the past several years, “Ban the Box” or “Fair Chance” laws have continued to spread at the local, county and state level. “Ban the box” is the practice of moving the criminal history inquiry to later in the hiring process. However, several jurisdictions have taken a step beyond, regulating the timing of the criminal history question to enact comprehensive fair chance laws. Employers that have removed the criminal history question from their employment application or hiring process must still be cognizant of these fair chance laws as they impact the adverse action process and may impose additional requirements.

# BAN THE BOX & FAIR CHANCE LAWS

## Jurisdiction

### **California**

#### Statewide

#### Los Angeles City, CA

#### Los Angeles County, CA

#### San Francisco, CA

### **Colorado**

### **Connecticut**

### **District of Columbia**

### **Florida**

#### Gainesville, FL

### **Georgia**

#### Atlanta, GA

### **Guam**

### **Hawaii**

### **Illinois**

#### Chicago, IL

#### Cook County, IL

### **Indiana**

### **Iowa**

#### Des Moines, IA

#### Waterloo, IA

### **Louisiana**

### **Maine**

### **Maryland**

**Baltimore, MD**

**Montgomery County, MD**

**Prince George's County, MD**

**Massachusetts**

**Michigan**

**Grand Rapids, MI**

**Minnesota**

**Missouri**

**Columbia, MO**

**Kansas City, MO**

**St. Louis, MO**

**New Jersey**

**New Mexico**

**New York**

**Buffalo, NY**

**New York City, NY**

**Rochester, NY**

**Suffolk County, NY**

**Westchester County, NY**

**Oregon**

**Portland, OR**

**Pennsylvania**

**Lehigh County, PA**

**Philadelphia, PA**

**Rhode Island**

**Texas**

**Vermont**

**Virgin Islands**

**Washington**

**Seattle, WA**

**Spokane, WA**

**Jurisdiction Specific Information**

*Note: The following represents a high-level snapshot of each ordinance or law. Asurint continually reviews this guide for accuracy and completeness, but it may be possible an applicable law is missing or outdated. Consultation with qualified legal counsel is recommended to determine if and how these laws impact your hiring process.*

# CALIFORNIA

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## CALIFORNIA STATEWIDE

### **§ 11017.1. Consideration of Criminal History in Employment Decisions Regulations (amended effective October 1, 2023); Labor Code 432.7**

There are two primary portions of California law that impact employer use of criminal history information. The amended Regulations which take effect October 1, 2023, are far more extensive than the Labor Code. The following content addresses the amended Regulations.

Important Note: the amended Regulations changed several definitions including that for employer and applicant.

Employer: includes a labor contractor and a client employer; any direct and joint employer; any entity that evaluates the applicant's conviction history on behalf of an employer, or acts as an agent of an employer, directly or indirectly; any staffing agency; and any entity that selects, obtains or is provided workers from a pool or availability list.

Applicant: includes, in addition to the individuals within the scope of the general definition in section 11008(a) of these regulations, individuals who have been conditionally offered employment, even if they have commenced employment when the employer undertakes a post-conditional offer review and consideration of criminal history; existing employees who have applied or indicated a specific desire to be considered for a different position with their current employer; and an existing employee who is subjected to a review and consideration of criminal history because of a change in ownership, management, policy, or practice. An employer cannot evade the requirements of Government Code section 12952 or this regulation by having an individual lose their status as an "applicant" by working before undertaking a post-conditional offer review of the individual's criminal history.

There are several additional definitions, including for "client employer" and "labor contractor" that employers are encouraged to review.

### Criminal history question

Employers may not inquire into, consider, distribute or disseminate information related to the criminal history of an applicant until after the employer has made a conditional offer of employment. This includes inquiring into criminal history through an employment application, background check, or internet searches.

Employers who inquire into criminal history prior to extending a conditional offer of employment (in violation of the Regulations) cannot use the applicant's failure to disclose criminal history information prior to the conditional offer as a factor in subsequent employment decisions.

There are a few exceptions to this prohibition against inquiring into or using criminal history before a conditional offer (note: even if you fall under one of these exceptions, other requirements in the Regulations apply):

- If the employer is a state or local agency and is required by law to conduct a conviction history background check;
- If the position is with a criminal justice agency as defined in the Penal Code;
- If the position is as a Farm Labor Contractor as defined in the Labor Code; or
- If the position is one that an employer, or an employer's agent, is required by any state, federal or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history.

Notably, for the last exemption listed, there are several qualifiers listed in the Regulations including that the employer actually be required by law to conduct the criminal background check. A law requiring another entity, such as an occupational licensing board, to conduct the criminal background check will not exempt an employer from the prohibitions above.

If an applicant voluntarily provides their criminal history prior to receiving a conditional offer, the employer must not consider any information they are otherwise prohibited from considering. In addition, the employer cannot consider any other conviction history information until after extending a conditional offer (unless an exemption applies).

### Any additional requirements (i.e., adverse action, posting, etc.)?

Employers may not include statements in job advertisements, postings, applications or other materials that no persons with criminal history will be considered for hire, such as "No Felons" or "Must Have Clean Record".

Employers may not consider the following in their decision-making process:

- (1) An arrest or detention that did not result in conviction (Labor Code section 432.7)
- (2) Referral to or participation in a pretrial or post-trial diversion program (Id.) (Note: It is permissible for employers to consider these programs as evidence of rehabilitation or mitigating circumstances after a conditional offer if offered by the applicant as evidence of rehabilitation or mitigating circumstances.)
- (3) A conviction that has been judicially dismissed or ordered sealed, expunged or statutorily eradicated pursuant to law (e.g., juvenile offense records sealed pursuant to Welfare and Institutions Code section 389 and Penal Code sections 851.7 or 1203.45) (Id.) or any conviction for which the person has received a full pardon or has been issued a certificate of rehabilitation.

(4) An arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law (Id.).

(5) A non-felony conviction for possession of marijuana that is two or more years old (Labor Code section 432.8).

The Regulations state that employers are also subject to the Fair Credit Reporting Act and the California Investigative Consumer Reporting Agencies Act when obtaining investigative consumer reports such as background checks.

### Individualized Assessment

If the employer intends to deny an applicant the conditionally offered position based solely or in part of the criminal history, the employer must first conduct an individualized assessment – a reasoned, evidence-based determination of whether the applicant’s criminal history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position.

At a minimum, the individualized assessment must include consideration of the following factors:

1. The nature and gravity of the offense or conduct (including, but not limited to):
  - a. The applicant’s specific personal conduct that resulted in the conviction;
  - b. Whether the harm was to property or people;
  - c. Degree of the harm;
  - d. Permanence of the harm;
  - e. Context in which the offense occurred;
  - f. Whether a disability (including a past drug addiction or mental impairment) contributed to the offense or conduct, and if so, if the likelihood of future harm could be mitigated or eliminated by a reasonable accommodation or if the disability has been mitigated or eliminated;
  - g. Whether trauma, domestic or dating violence, sexual assault, stalking, human trafficking, duress or other similar factors contributed to the offense or conduct; and/or
  - h. The age of the applicant when the conduct occurred.
2. The time passed since the offense or conduct and completion of the sentence (including but not limited to):
  - a. Amount of time passed since the conduct underlying the conviction which may predate the conviction itself; and/or
  - b. Amount of time passed since the applicant’s release from incarceration (if the conviction led to incarceration).
3. The nature of the job held or sought (including but not limited to):
  - a. Specific duties of the job;
  - b. Whether the context in which the conviction occurred is likely to arise in the workplace; and/or
  - c. Whether the type or degree of harm that resulted from the conviction is likely to occur in the workplace.

Employers must consider any evidence of rehabilitation or mitigating circumstances provided by the applicant, or another party at the applicant’s request, before or during the initial individualized assessment.

## Adverse Action

If, after conducting an initial individualized assessment, the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant, the employer shall notify the applicant of this preliminary decision in writing. The written notice may, but is not required to, justify or explain the employer's reasoning for making the decision. The notice must include:

- Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision;
- Copy of the conviction history report (including the consumer report);
- Notice of the applicant's right to respond before the preliminary decision becomes final;
- An explanation that, if the applicant chooses to respond, the response may include submission of either or both of the following: evidence challenging the accuracy of the conviction history report, or evidence of rehabilitation or mitigating circumstances.
- Notice of the deadline for the applicant to respond (see further information below).

Employers should review the Regulations for an extensive listing of examples of evidence of rehabilitation or mitigating circumstances. Any such information is optional for the applicant to provide. Employers may not refuse to accept additional evidence voluntarily provided, require an applicant to submit additional evidence or a specific type of documentary evidence, require an applicant to disclose their status as a survivor of domestic or dating violence, sexual assault, etc., or require an applicant to produce medical records or disclose the existence of a disability or diagnosis.

The notice of the deadline for the applicant to respond must be at least five (5) business days from the "date of receipt" of the notice. "Date of receipt" is calculated based on the method of sending. If notice does not provide a confirmation of receipt (such as a tracked delivery) then the notice will be deemed received: (i) for email, two (2) business days after it is sent; (ii) for mail, five (5) calendar days after delivery for California addresses, ten (10) calendar days for outside of California address and twenty (20) calendar days for outside of the US addresses. Employers are encouraged to consult with legal counsel whether receiving a bounce back or other undeliverable notice associated with email should start a new "date of receipt" calculator when resending the notice via mail.

If the applicant timely notifies the employer that the applicant is disputing the accuracy of the information, then the applicant must be provided at least five (5) additional business days to respond before the decision may become final.

The employer must then conduct a reassessment if provided information by the applicant before making a final decision whether or not to rescind the conditional offer. There are a number of factors employers may consider during this reassessment process included within the Regulations.

If a final decision is made to rescind the conditional offer, the employer must notify the applicant in writing. Such notice must include:

- The final decision reached which may include (but is not required to include) the justification or explanation of the employer's reasoning for reaching the decision;
- Any procedure the employer has for challenging the decision or request reconsideration; and
- The right to contest the decision by filing a complaint with the Civil Rights Department.



The employer may, but is not required to, use the sample individualized assessment form and notification templates available on the Civil Rights Department website. Sample forms may be found here: <https://calcivilrights.ca.gov/fair-chance-act/fca-forms/>.

### **Less Discriminatory Alternatives**

Individuals may still prevail if they can demonstrate that there is a less discriminatory policy or practice that serves the employer's goals as effectively as the challenged policy or practice such as a more narrowly targeted list of convictions or another form of inquiry that evaluates job qualified or risk as accurately without significantly increasing the cost or burden on the employer.

### **Enforcement**

The Civil Rights Department will investigate complaints filed by individuals. Individuals may also obtain an immediate right-to-sue notice.

Note: there are a number of additional changes covered within the Regulations, such as requirements related to the Work Opportunity Tax Credit, not addressed here. Please review the Regulations in full and consult with qualified legal counsel.

## LOS ANGELES CITY, CALIFORNIA

### **“Los Angeles Fair Chance Initiative for Hiring”; Rules and Regulations Implementing The Fair Chance Initiative For Hiring (Ban the Box) Ordinance**

Applies to employers located in or doing business in the City that has at least 10 employees, which includes the owner or owners, and management and supervisory employees. It also includes job placement, referral and employment agencies. “Employee” is defined broadly to include any individual who performs at least two hours of work on average each week within the geographic boundaries of the City and who qualifies as an employee entitled to payment of minimum wage under the California minimum wage law. Average week is determined by the last four complete weeks before the position is advertised. Employee also includes full-time, part-time seasonal or temporary employment positions, independent contractors and employees that telecommute (while living within the City).

To determine if a workplace or job site lies within the City limits, you may use Neighborhood Info (<http://neighborhoodinfo.lacity.org/>). Follow the exact instructions of this website. If an address is located within the boundaries of the City and is correctly entered, then the search will locate the address on the map with detailed address information.

#### **Criminal history question**

Employers cannot inquire into an individual’s criminal history until after extending a conditional offer, or include the criminal history question on an employment application. “Inquire” is defined to include any direct or indirect conduct intended to gather criminal history information from or about an applicant, including, but not limited to, application forms, interviews and criminal history reports.

For temporary help firms, a conditional offer would be considered when an individual is to be placed in a pool of applicants from which the applicant may be sent to temporary positions.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

- Employers must state in all job advertisements and solicitations that qualified applications with criminal history will be considered for employment.
- Employers cannot include a statement such as “Criminal background checks must be passed to be considered for a position” on an employment application.

- Employers must post a notice informing individuals of the law's provisions in a conspicuous place at every workplace, job site or other location within the City under the employer's control. A copy of the notice must also be sent to each labor union or representative of workers with which they have a collective bargaining agreement or other agreement.
- Employers are prohibited from discharging, reducing the compensation of or otherwise taking action against any employees who complain to the City or who seek to enforce his or her rights under the law.
- Employers must retain all records and documents related to employment applications, written assessments and reassessments for a period of three years following receipt of an individual's employment application.

### Adverse Action:

Employers are prohibited from taking adverse action based on an individual's criminal history unless a written assessment is conducted that "effectively links the specific aspects" of the individual's criminal history "with risks inherent in the duties" of the position sought. At a minimum, employers must consider the factors outlined by the Equal Employment Opportunity Commission: the nature and gravity of the offense or conduct, the time that has passed since the offense or conduct and the nature of the job held or sought.

Following the written assessment, employers may still not take adverse action against an individual until after conducting the "Fair Chance Process". Under the Fair Chance Process, employers must provide the individual with written notification of the potential adverse action, a copy of the written assessment and any other information or documentation that supports the decision. Employers must then wait at least five (5) business days before making a final decision. During this time, the employer cannot fill the position sought by the applicant. If an applicant provides additional information or documentation, employers must take that into consideration and perform a written reassessment of the proposed adverse action. Finally, if adverse action will still be taken, the applicant must be notified and provide a copy of the written reassessment.

### Enforcement

The Department of Public Works, Bureau of Contract Administration, has administrative responsibilities and may issue civil penalties or administrative fines. Individuals also have a private cause of action, but cannot bring a civil action unless the alleged violation has been reported to the Department and the administrative enforcement process has been completed. The civil action must then be brought within one year of the completion of the enforcement process or the issuance of the hearing officer's decision (whichever is later).

The Department has published FAQs, guidelines, the notice and assessment and reassessment form: <https://bca.lacity.org/fair-chance>.

## LOS ANGELES COUNTY, CALIFORNIA

### Fair Chance Ordinance; FAQs

Applies to employers with 5 or more employees regardless location including any entity/agent that evaluates criminal history on behalf of an employer, whenever the employee will work within the [unincorporated areas of Los Angeles County](#) at least two (2) hours on average each week.

#### Criminal history question

Employers may not inquire into criminal history or conduct the background check until after extending a conditional offer (unless they are legally required to do so sooner). Employers must not encourage applicants to voluntarily disclose the information and cannot use any obtained criminal history information prior to this point in the process.

Additionally, employers cannot require applicants to complete a criminal history questionnaire until after they have received the criminal background check results and must first provide those results to the applicant.

If an employer intends to review an applicant's criminal history, it must provide written notice including:

- The conditional offer is contingent upon review of the criminal history.
- A statement that the employer has good cause to conduct a review of criminal history for the specific job position with supporting justification (must go beyond a broad statement such as "safety concerns").
- A complete list of any other information that may be reviewed including: education and/or employment verifications, social media history, motor vehicle or driving history, reference checks, license or credential verification, drug testing or medical examinations.

#### Adverse Action

##### *Initial Individualized Assessment*

The FCO requires employers conduct an initial individualized assessment in writing taking into account several factors such as the nature and gravity of the offense or conduct, time passed since the conduct, nature of the employment position, or any rehabilitation or mitigating circumstances. If an applicant has a license, certificate or other credential, it will be presumed the applicant's criminal history is not directly, adversely or negatively related to the specific duties of the position so the employer must provide an explanation to rebut this presumption in their initial individualized assessment.

##### *Delays in Background Check Completion*

Employers cannot base a decision to rescind or withdraw a conditional offer solely on the fact the criminal background check is delayed. In order to take such action, employers must demonstrate they suffered an undue burden if they continued to hold the job position open pending the background check's completion and at least ten business days have passed since the report was requested. Employers must inform the applicant if a decision will be made to withdraw the conditional offer based on this reason.

### *Preliminary Adverse Action Notice*

If an employer intends to withdraw the conditional offer, it must provide a preliminary notice of adverse action that must be sent via mail and email (if an email is provided). The notice must include the intention to withdraw/rescind the offer, provide an explanation of the waiting periods and timelines which must be displayed in bold font, underlined or in all capital letters, and the applicant's response may include evidence challenging the accuracy of the report and/or evidence of rehabilitation or mitigating circumstances. The employer must also include a copy of the report, the individualized assessment, and notice of the disqualifying conviction(s).

The employer must wait at least five (5) business days before making a final decision. If the applicant disputes information on the report, or asks for additional time to provide evidence of rehabilitation or mitigating circumstances, the employer must provide at least ten (10) additional business days. The position must remain open during this period. Similar to California's statewide law, the notice period begins following a date of receipt period with one key difference. The waiting period cannot begin until the notice is received based on the mailing time period. For example, if the pre-adverse action letter is sent by mail to an address in California, the letter will be deemed as received five (5) calendar days after it is sent.

### *Second Individualized Assessment*

Prior to making a final decision, the employer must consider any information provided by the applicant and perform a second individualized assessment that is documented in writing.

### *Final Adverse Action Notice*

If the decision is made to withdraw the employment offer or take any other adverse action, the employer must notify the applicant via mail and email. The notification must include the second individualized assessment, conviction(s) forming the basis for the decision, information regarding any procedure to challenge the decision or request reconsideration, and notice of the individual's right to file a complaint with the Los Angeles County Department of Consumer & Business Affairs.

## **Any additional requirements (i.e., adverse action, posting, etc.)?**

### *Prohibition on Certain Criminal History Information Consideration*

Employers may not consider: (1) arrest only information (does not include "unresolved arrests"), (2) referral to or participation in a pretrial or post-trial diversion program or a deferral of judgment program, (3) sealed, dismissed, expunged convictions or convictions where the person has received a pardon or been issued a certificate of rehabilitation, (4) juvenile records, (5) non-felony possession of marijuana convictions that are more than two years old, (6) convictions older than seven years as measured from the date of disposition (with some exceptions), (7) infractions or other non-felony or misdemeanor convictions, and (8) convictions that arose out of conduct that has since been decriminalized.

### *Job Advertisements*

The FCO also impacts job postings and announcements, including requiring language that all qualified applicants with arrest or conviction records will be considered for employment in accordance with the FCO and the California Fair Chance Act. Further, employers must include in any solicitations, bulletins, postings, announcements, etc. a list of all material job duties of the specific position which the employer reasonably believes criminal history may have a direct, adverse and negative relationship potentially resulting in the withdrawal of the conditional employment offer. There are several other impacts to job advertisements within the FCO employers should review.

*Other Impacts*

The FCO also addresses posting requirements, record retention obligations and prohibits retaliation, and also provides protections for employers from negligent hiring and retention claims if the employer was prohibited from considering the particular criminal history information that may be at issue.

**Enforcement**

Private and public remedies are available under the FCO.

## SAN FRANCISCO, CALIFORNIA

### **Fair Chance Ordinance; Amendments effective October 1, 2018**

Applies to employers with 5 or more employees regardless of whether those employees are located in San Francisco or not. The calculation of employees also includes owner or owners, and management and supervisory employees. "Employment" shall mean any occupation, vocation, job, or work, including but not limited to temporary or seasonal work, part-time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency, or any form of vocational or educational training with or without pay. The physical location of the employment or prospective employment of an individual must be at least eight (8) hours per week within the City.

#### **Criminal history question**

Employers may not inquire into or require disclosure of conviction history or unresolved arrests on an employment application. An employer may ask on an employment application for an applicant, potential applicant or employee's written consent for a Background Check so long as the application includes a clear and conspicuous statement that the employer will not itself conduct or obtain from a third party the background check until either after the first live interview with the person or after a conditional offer of employment.

Employers may not inquire into or require disclosure of conviction history or unresolved arrests until after a conditional offer of employment. Prior to inquiring into conviction history, employers must provide a copy of the Fair Chance Ordinance Notice.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

- Employers covered by the Fair Chance Ordinance must submit an Employer Annual Reporting Form by April 30th each year for the prior calendar year.
- Employers may not consider the following in a hiring decision:
  1. An arrest not leading to a conviction, except for unresolved arrests.
  2. Participation in a diversion or deferral of judgment program.
  3. A conviction that has been dismissed, expunged, otherwise invalidated or inoperative.
  4. A conviction in the juvenile justice system.
  5. An offense other than a felony or misdemeanor, such as an infraction.
  6. A conviction that is more than seven (7) years old (unless the position being considered supervises minors or dependent adults).
- Employers must 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 from the Office of Labor Standards Enforcement (OLSE): "Pursuant

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

- Employers must conspicuously post the Official Fair Chance Ordinance Notice in every workplace/job site under the employer’s control, and must send a copy of this notice to each labor union or representative of workers with which they have a collective bargaining agreement or other agreement or understanding, that is applicable to employees in San Francisco. The notice must be posted in English, Spanish, Chinese and any language spoken by at least 5 percent of the employees at the workplace, job site or other location at which it is posted.
- Employers must maintain and retain accurate records of employment, application forms and other pertinent data for three (3) years, and allow the OLSE reasonable access to these records for monitoring and compliance purposes.
- Employers are prohibited from considering charges that have been decriminalized since the date of conviction. Examples would be marijuana and cannabis offenses. Employers need to evaluate any potentially disqualifying convictions to determine whether the charge has been decriminalized post-conviction.

### **Adverse Action:**

Employers are required to conduct an individualized assessment considering only directly-related convictions, the time that elapsed since the conviction or unresolved arrest and any evidence of inaccuracy, mitigating factors or rehabilitation.

If an employer intends to take adverse action based on anything in the individual’s conviction history, the employer must:

- Provide the individual with a copy of the background check report.
- Notify the items forming the basis for the prospective adverse action. Wait seven (7) days before taking a final adverse action and hold the position open during this process.
  1. If during that seven (7) day period the individual provides the employer notice (orally or in writing) of any evidence of inaccuracy or evidence of rehabilitation or other mitigating factors, the employer must delay final adverse action for a reasonable period and shall reconsider its decision during that time.

If the employer’s decision becomes final, the employer must notify the individual of that decision.

### **Enforcement**

The Office of Labor Standards Enforcement is authorized to enforce the Fair Chance Ordinance, and may issue warnings/notices to correct and administrative penalties. If the employer does not demonstrate prompt compliance, the OLSE may refer the action to the City Attorney to consider initiating a civil action.

Effective Oct. 1, 2018: There are increased penalties for non-compliance. For example, the existing ordinance did not assess any penalties for the first violation. The amendment now allows for up to a \$500 penalty for the first violation. Penalties are paid to the impacted individual. If



multiple people are impacted by the same procedural violation at the same time, the violation will be treated as one violation per each impacted person.

# COLORADO

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## COLORADO STATEWIDE

### **House Bill 19-1025**

Applies to any employers with one or more employees. Note: employers with 11 or more employees must be in compliance with the law effective September 1, 2019. All other employers must be in compliance by September 1, 2021.

### **Criminal history question**

Employers may not inquire into or require disclosure of an individual's criminal history on an initial written or electronic employment application.

### **Any additional requirements (i.e., adverse action, posting, etc.)?**

Employers may not state in job advertisements or on any form of employment application that persons with criminal history may not apply.

### **Enforcement**

The Department of Labor and Employment is charged with enforcing this law. For a first violation, an employer may receive a warning and order to comply. For the second violation, an employer may receive an order requiring compliance within 30 days and a civil penalty not to exceed \$1,000 dollars. For a third and subsequent violation, an employer may receive an order requiring compliance within 30 days and a civil penalty not to exceed \$2,500 dollars.

# CONNECTICUT

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## CONNECTICUT STATEWIDE

### **Public Act No. 16-83. "An Act Concerning Fair Chance Employment."**

Applies to any employers with one or more employees.

#### **Criminal history question**

Prohibits employers from inquiring into whether an applicant has ever been arrested for, charged with or convicted of any crime on an initial employment application. Employers are also prohibited from requiring an employee or prospective employee to disclose the existence of any arrest, criminal charge or conviction which have been erased.

If an employment application form contains any question regarding criminal history, there must be a specific notice, in clear and conspicuous language, that the applicant is not required to disclose particular items of criminal history.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements.

A new law was passed, SB 1019, effective October 1, 2021. This law amends the employer criminal background check law adding a definition for "erased criminal history record information." The amendments go on to provide that on and after January 1, 2023 it is an illegal discriminatory practice for an employer or employer's agent, an employment agency or a labor organization to discriminate in employment matters on the basis of a person's erased criminal history record information or to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against persons on the basis of their erased criminal history record information.

#### **Enforcement**

The Labor Commissioner of the Connecticut Department of Labor.

# DISTRICT OF COLUMBIA

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## DISTRICTWIDE

### **“Fair Criminal Record Screening Amendment Act of 2014”**

Applies to any business that employs more than 10 employees in the District of Columbia. Includes temporary or seasonal work, contracted work, contingent work and work through temporary or employment agencies, or any form of vocational or educational training with or without pay where the physical location of employment is in whole or substantial part within the District of Columbia.

#### **Criminal history question**

Employers may not inquire into an arrest or criminal accusation that is not currently pending or did not result in a conviction. As for criminal convictions, employers may not inquire or require applicant to disclose criminal convictions until after extending a conditional offer of employment.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

Employers may only withdraw a conditional offer or take an adverse action for a legitimate business reason. The legitimate business reason must be reasonable in light of several specific factors:

1. Specific duties and responsibilities related to the employment sought by the applicant
2. The bearing, if any, of the criminal offense for which the applicant was previously convicted, on his/her fitness or ability to perform the job’s duties or responsibilities
3. Time elapsed since the criminal offense occurred
4. Age of the applicant at the time of the criminal offense
5. Frequency and seriousness of the criminal offense
6. Any information produced by the applicant in regard to his/her rehabilitation and good conduct since the offense occurred.
7. If the applicant believes a conditional offer was terminated or an adverse action was taken on the basis of a criminal conviction, the applicant may request, within 30 days after the termination or adverse action, that the employer provide the applicant within 30 days of receipt of the request:
8. A copy of any and all records procured by the employer in consideration of the applicant, including criminal records, and

9. A notice that advises the applicant of his/her opportunity to file an administrative complaint with the Office of Human Rights.

**Enforcement**

The Office of Human Rights will investigate complaints and award civil penalties if a violation occurs. There is no individual private cause of action available.

# Florida

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## GAINESVILLE

### Fair Chance Ordinance

Applies to employers with fifteen (15) or more employees whose primary work location is in the City of Gainesville for each working day in each of four (4) or more calendar weeks in the current or preceding calendar year. This includes agencies acting on behalf of an employer.

### Criminal history question

Employers may not solicit or otherwise inquire about criminal history in an employment application. Criminal history may only be solicited or considered following a conditional offer of employment.

*Note: staffing agencies may solicit and use criminal history information when it has identified a job for the individual or placed the individual in a staffing pool.*

### Any additional requirements (i.e., adverse action, posting, etc.)?

Under the ordinance, employers may not:

- Publish information about a job that states or implies an individual's criminal history automatically disqualifies the individual from consideration.
- Solicit or otherwise inquire about criminal history in an employment application.
- Solicit from the applicant or otherwise inquire through third parties information about an arrest or criminal accusation made against an individual, other than an arrest or criminal accusation relating to domestic violence, which:
  - Is not pending against the applicant; or
  - Did not result in a conviction, plea of nolo contendere or deferred adjudication.
- Solicit or consider criminal history unless a conditional offer of employment has been extended (employers may explain, in writing, the individualized assessment system used to consider criminal history).
- Refuse to employ or consider employing an individual because the person did not provide criminal history information prior to a conditional offer.
- Take adverse action against an individual due to criminal history unless the employer has determined the person is unsuitable for the job based on an individualized assessment.

Adverse action:

- Prior to taking adverse action due to the individual's criminal history, an employer must:

- Inform the individual of the basis for the decision,
- Provide the individual with the criminal history records used in their consideration, and
- Provide the individual a reasonable opportunity to provide the employer with additional context about the criminal history records and any information demonstrating the individual's rehabilitation and good conduct since the occurrence of the criminal offense.
- The written final adverse action notice must include:
  - That the adverse action was based on the individual's criminal history, and
  - The following statement: This notice is provided in accordance with the City of Gainesville Code of Ordinances, Chapter 14.5, Section 14.5-181, which regulates the process and timing of criminal background checks conducted on job applicants.

### **Enforcement**

The Office of Equity and Inclusion is responsible for enforcing the Fair Chance Ordinance.

# GEORGIA

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## ATLANTA

### **Ordinance 22-O-1748**

Ordinance amended the City of Atlanta Code of Ordinances Chapter 94 (Human Relations) in several places by including “criminal history status” as a protected class.

#### **Criminal history question**

While the Ordinance does not specifically address if or when an employer can include a criminal history question, it is an unlawful employment practice for employers to fail or refuse to hire, terminate or other discriminate against an individual due to criminal history status. The prohibitions also apply to employment agencies.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

Employers may not publish or circulate job advertisements indicating any preference, limitation, specification or discrimination based on criminal history status.

Any adverse employment decisions based on criminal history status must take into account how the criminal history related to the position’s responsibilities using the following considerations: 1) whether the committed the offense; 2) the nature and gravity of the offense; 3) the time since the offense; and 4) the nature of the job for which the applicant has applied.

Nothing in the Ordinance prohibits an employer from making an adverse employment decision based on criminal history status when related to positions where certain criminal convictions are a bar to employment under state or federal law requirements such as positions that work with children or law enforcement.

#### **Enforcement**

The Human Relations Commission is charged with enforcing the law.



# GUAM

## GUAM TERRITORYWIDE

### **Public Law 34-22, "Fair Chances Hiring Process Act"**

Applies to employers with more than fifteen employees in Guam. Includes any type of work for pay including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency. The law was enacted in July 2017, but took effect February 8, 2018.

#### **Criminal history question**

Employers may not request a police clearance or court clearance as part of an employment application. Upon a conditional offer, employers may then ask the employee to provide evidence as to any pending criminal cases or criminal history.

At any point in the hiring process, employers may not inquire into or require disclosure of an applicant's arrest record or criminal cases which resulted in dismissal, expungement, sealing or otherwise did not result in a conviction. However, employers can ask about pending criminal cases (and other criminal history) after extending a conditional offer.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

There are no specific adverse action requirements from a process perspective. However, employers may only withdraw a conditional offer for a "legitimate business reason". In making this decision, employers must consider factors such as: (1) the specific duties and responsibilities related to the employment sought/held; (2) the bearing (if any) of the criminal history on the applicant's fitness/ability to perform the position; (3) time elapsed since the criminal history occurred; (4) age of the person at the time of the criminal history; (5) the frequency or severity of the criminal history; and (6) any information provided by the individual in regard to rehabilitation or good conduct.

Additionally, if an applicant's offer is withdrawn or any other adverse action is taken due to the individual's criminal history, the applicant may request the following from the employer: (1) copy of any/all records obtained by the employer in considering the applicant; and (2) a written "statement of denial" which outlines the legitimate business reason and specifically demonstrates consideration of each factor outlined in the law. This must be provided within thirty days of the request. Failure to produce this information creates a rebuttable presumption that no legitimate business reason exists for denying the employment.

The law also specifies that the Guam Police Department and the Superior Court of Guam are prohibited from revealing any information concerning an arrest that did not result in a filed criminal case, or a court case that was dismissed (whether or not it was expunged) to a third party.

### **Enforcement**

Individuals harmed under this law may file a complaint with the Guam Department of Labor. The Department may issue training requirements, written warnings and financial penalties ranging from \$1,000-\$4,000 per occurrence depending on the size of the organization.

# HAWAII

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## HAWAII STATEWIDE

### **Hawaii Revised Statute §378-2; §378-2.5, amended by SB 2193**

Hawaii Revised Statute §378-2 includes “arrest and court record” as a protected class making it an unlawful discriminatory practice for employers to refuse to hire or employ, or otherwise discriminate against an individual based on this or any other protected class. The law applies to any employer with 1 or more employees. Additionally, the law applies to both applicants and current employees.

#### **Criminal history question**

Employers may inquire into conviction records after the individual has received a conditional offer of employment that may be withdrawn if the applicant’s conviction record bears a rational relationship to the duties and responsibilities of the position. Effective September 15, 2020, employers may only consider felony criminal convictions for a period of 7 years and misdemeanor convictions for a period of 5 years (excluding periods of incarceration for both felonies and misdemeanors). Previously employers could consider criminal convictions for a period of 10 years.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No adverse action impacts. Employers are also prohibited from including any limitations in a job advertisement or publication, or on an employment application, based on any protected class.

#### **Enforcement**

The Hawaii Civil Rights Commission may investigate claims and order appropriate affirmative action (such as hiring, reinstatement or upgrading employees). There is also a private cause of action for individuals.

# ILLINOIS

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## ILLINOIS STATEWIDE

### **Job Opportunities for Qualified Applicants Act**

Applies to employers with 15 or more employees in the current or preceding calendar year, and includes employment agencies.

#### **Criminal history question**

Employers may not inquire into, consider or require disclosure of criminal history until the applicant has been determined qualified for the position and notified that he/she has been selected for an interview. If there is no interview, the inquiry or consideration of may take place following a conditional offer of employment.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements.

#### **Enforcement**

The Illinois Department of Labor is responsible for investigating alleged violations and may impose civil penalties. There is no private cause of action for individuals.

### **Human Rights Act Amendments**

Under the amended Human Rights Act, it is a civil rights violation for an employer to use a conviction record as a basis to refuse to hire or otherwise take adverse action (such as terminating, disciplining or not promoting an individual) unless: (1) there is a substantial relationship between one or more of the convictions and the employment held or sought; or (2) the granting or continuation of employment involves an unreasonable risk to property or to the safety of individuals or the general public.

To determine if there is a “substantial relationship”, employers must analyze whether there is an opportunity for the same or similar offense to occur and whether the circumstances leading to the conduct that led to the individual’s conviction will recur in the employment position. As part of making this determination, employers must consider six (6) factors:

- 1) the length of time since the conviction;
- 2) the number of convictions that appear on the conviction record;

- 3) the nature and severity of the conviction and its relationship to the safety and security of others;
- 4) the facts or circumstances surrounding the conviction;
- 5) the age of the individual at the time of the conviction; and
- 6) evidence of rehabilitation efforts.

### **Adverse Action Impact**

If the employer preliminarily decides the conviction record may disqualify the individual based on its analysis of the above factors, it must notify the individual of this preliminary decision in writing. This notification must include:

- The conviction(s) that is the basis for the preliminary decision and the employer's reasoning for the disqualification,
- A copy of the "conviction history report" (if any) and
- An explanation of the individual's right to respond to the notice prior to a final decision. This must include informing the individual may submit evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence of mitigation including rehabilitation as an example.

The employer must then allow at least five (5) business days for the individual to respond prior to making a final decision and must consider any information provided to them by the individual. If the adverse decision becomes final based on the individual's criminal history, the employer must provide written notice of that final decision including again specifying the disqualifying conviction(s) and the employer's reasoning, along with any existing procedure the employer has for challenging the decision or requesting reconsideration, and the right of the individual to file a charge with the Department of Human Rights.

## CHICAGO, ILLINOIS

### Chapter 2-160 "Human Rights" (amendments)

Applies to all employers in the City with limited exceptions.

Note: Chicago amended its ban the box law in April 2023 with immediate effect. The law largely mirrors Illinois state law applies to all employers within the city whereas the Illinois state law only applies to employers with 15 or more employees.

#### Criminal history use

Employers may not use a person's conviction record to refuse to hire or otherwise impact an employment-related decision unless: (1) applicable law excludes applicants with certain criminal convictions from the position; (2) standard fidelity bond or equivalent is required for the relevant position and an applicant's conviction for a specified criminal offense(s) would disqualify them from obtaining such a bond; (3) there is a substantial relationship between the criminal offense(s) and the employment held or sought; or (4) the granting or continuation of employment involves an unreasonable risk to property or to the safety of individuals or the general public.

To determine if there is a "substantial relationship", employers must consider specific factors that mirror the statewide requirements:

- 1) the length of time since the conviction;
- 2) the number of convictions that appear on the conviction record;
- 3) the nature and severity of the conviction and its relationship to the safety and security of others;
- 4) the facts or circumstances surrounding the conviction;
- 5) the age of the individual at the time of the conviction; and
- 6) evidence of rehabilitation efforts

#### Any additional requirements (i.e., adverse action, posting, etc.)?

There is a similar impact to the adverse action process as under the Illinois state law as well, although employers who are in compliance with the statewide law must consider updating their adverse action form to make reference to the candidate's right to file a complaint with the Chicago Commission on Human Relations.

If the employer preliminarily decides the conviction record may disqualify the individual based on its analysis of the above factors, it must notify the individual of this preliminary decision in writing. This notification must include:

- The conviction(s) that is the basis for the preliminary decision and the employer's reasoning for the disqualification,
- A copy of the conviction record (if any) and
- An explanation of the individual's right to respond to the notice prior to a final decision. This shall include informing the individual that they may submit evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence of mitigation such as rehabilitation.

The employer must then allow at least five (5) business days for the individual to respond prior to making a final decision and must consider any information provided to them by the individual. If the adverse decision becomes final based on the individual's criminal history, the employer must provide written notice of that final decision including again specifying the disqualifying conviction(s) and the employer's reasoning, along with any existing procedure the employer has for challenging the decision or requesting reconsideration, and the right of the individual to file a charge with the Chicago Commission on Human Relations.

### **Enforcement**

The Chicago Commission on Human Relations is responsible for receiving and investigating complaints of violations and may impose monetary penalties. There is no private cause of action under the law.

## COOK COUNTY, ILLINOIS

### **Cook County Human Rights Ordinance, Section 42-35**

Applies to all private employers with one or more employees that have a principal place of business within Cook County or does business within Cook County. Employee includes any individual, whether paid or unpaid, engaged in employment or an applicant for employment. Does not apply to employers who are subject to the Illinois “Job Opportunities for Qualified Applicants Act” (see Illinois for more information below).

#### **Criminal history question**

Employers may not inquire into, consider or require disclosure of an applicant’s criminal record or history until after the applicant has been determined qualified for the position and selected for an interview. If there is no interview, the inquiry must take place after a conditional offer of employment is extended. Employers are permitted to notify the applicant in writing of the specific offenses that will disqualify him/her from employment in a particular position.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No specific adverse action impacts.

#### **Enforcement**

Cook County Commission on Human Rights will investigate complaints filed under the law. Individuals also have a private cause of action.



# INDIANA

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## INDIANA STATEWIDE

### **IC 22-2-17 “Use of Criminal History Information in Employment Decisions”**

#### **Preemption Bill**

This Act prohibits any city or “political subdivision” from enacting ban the box laws. Additionally, criminal history information may only be introduced as evidence against an employer in a civil action based on the conduct of the employee/former employee if the nature of the criminal history information bears a direct relationship to the facts of underlying the civil action.

#### **Criminal history question**

No impact. This legislation was designed to prevent cities/municipalities from enacting ban the box laws.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements.

# IOWA

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## DES MOINES, IOWA

### **Ordinance No. 16,083**

*Applies to employers in the city with four (4) or more employees.*

#### **Criminal history question**

It is an illegal discriminatory employment practice for an employer to include a criminal history question on an employment application.

It is also an illegal discriminatory employment practice to make any inquiry regarding or to require disclosure of any convictions, arrests or pending criminal charges during the application process including during any interviews. If the individual voluntarily discloses such information, the employer may then discuss with the individual. The application process begins when the applicant inquires about employment and shall end when a conditional offer of employment is extended.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

There are no adverse action requirements under the Ordinance. The Ordinance notes that employers must comply with any state or federal law obligations relating to background check authorizations, adverse action and use of criminal history information.

#### **Enforcement**

The Human Rights Commission has the authority to enforce the Ordinance.

## WATERLOO, IOWA

### **“Unfair Use of Criminal Record in Hiring Decisions” (Effective July 1, 2020). Amendment. Training/Resources.**

*The Ordinance impacts employers differently depending on employee count. Waterloo also refers to the law as the Fair Chance Initiative Ordinance. Note: on June 18, 2021, the Iowa Supreme Court held that Iowa state law preempts this Fair Chance Initiative Ordinance in some respects.*

#### **Criminal history question**

**Employers with 1-14 employees:** No question regarding criminal history may occur on an employment application.

**Employers with 15 or more employees:** Employers may not include the criminal history question on any application. Employers are prohibited from making any inquiry into, or requiring an individual to disclose, any convictions, arrests or pending charges during the application process (including interviews). The application process ends when a conditional offer is extended. Employers may consider any criminal history voluntarily disclosed by the applicant.

*Note: The Iowa Supreme Court’s June 18<sup>th</sup> ruling kept intact this provision of the ordinance.*

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

There are no adverse action requirements under the Ordinance. However, a background check may not be conducted until after a conditional job offer is extended.

*Note: The Iowa Supreme Court’s June 18<sup>th</sup> ruling struck down the remaining portions of the ordinance.*

# LOUISIANA

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## LOUISIANA STATEWIDE

### **Act No. 406 Related to Criminal Records**

#### **Criminal history question**

Effective June 23, 2021, employers are prohibited from requesting or considering an arrest record or charge that did not result in a conviction. The law does not prohibit questions into criminal conviction information.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

When considering other types of criminal history records, employers are required to conduct an individualized assessment where several factors should be evaluated to determine if the applicant's criminal history record has a "direct and adverse relationship with the specific duties of the job that may justify denying the applicant." The following factors to consider are provided:

- The nature and gravity of the offense or conduct.
- The time that has elapsed since the offense, conduct, or conviction.
- The nature of the job sought.

Upon written request from the applicant, employers are also required to provide the applicant any background check information used during the hiring process.

# Maine

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## MAINE STATEWIDE LAW

### **LD 1167 “An Act Related to Fair Chance Employment”**

"Employer" means a person in the State who employs individuals and includes municipalities and political subdivisions of the State, but does not include an employer of an individual who holds a position in the legislative, executive or judicial branch of State Government.

#### **Criminal history question**

Effective October 18, 2021 employers are prohibited from requesting criminal history information on the initial employee application. The law states that employers may inquire about a prospective employee's criminal history during an interview or once the prospective employee has been determined otherwise qualified for the position.

There are several exceptions to the prohibition as it relates to requirements imposed on employer by federal or state law, regulations, or rules. Employers are exempt from the prohibitions if (i) there is a federal or state law, regulation or rule that disqualifies applicants with criminal history for the position, (ii) the employer is subject to an obligation imposed by federal or state law, regulation, or rule not to employ in a position a person with one or more types of criminal offenses. In these cases, the application should inquire into those specific criminal offenses, or (iii) the employer is required by federal or state law, regulation, or rule to conduct a criminal history record check for the position for which the prospective employee is applying.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

Employers are prohibited from advertising that a person with a criminal history may not apply or will not be considered for a position.

#### **Enforcement**

Employers who are found in violation of LD 1167 can face anywhere from \$100 to \$500 per violation as enforced by the Maine Department of Labor.

# MARYLAND

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## MARYLAND STATEWIDE

### **House Bill 994: Labor and Employment – Criminal Record Screening Practices (Ban the Box)**

Applies to employers with 15 or more full-time employees. Employment includes contractual, temporary, seasonal or contingent work, and work through the services of a temporary or other employment agency.

Note: Maryland’s Governor Larry Hogan vetoed this bill during the 2019 legislative session. The Maryland General Assembly voted to override Governor Hogan’s veto on January 30, 2020. This law will take effect on February 29, 2020.

#### **Criminal history question**

At any time before the first in-person interview, employers may not require an applicant to disclose whether the applicant has a criminal record or has had criminal accusations brought against them. During the first in-person interview, employers may require an applicant to disclose that information.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements are imposed upon employers; however, employers are not allowed to retaliate against an individual who alleges a violation of this law. However, the law clearly states that it does not preempt local laws that are more restrictive. Therefore, employers must still comply with the local ordinances in Baltimore, Prince George’s County and Montgomery County.

#### **Enforcement**

The Commission of Labor and Industry is responsible for enforcement. If the Commissioner determines an employer has violated this law, the Commissioner may issue an order compelling compliance and, for subsequent violations, may assess a civil penalty of up to \$300 for each applicant with respect to whom the employer violated the law.

## BALTIMORE, MARYLAND

### **Subtitle 15: Fair Criminal-Record Screening Practices**

Applies to employers with 10 or more full-time equivalent employees in the City. Employment means any work for pay and any form of vocational or educational training, with or without pay. It also includes contractual, temporary, seasonal or contingent work and work through services of a temporary or other employment agency.

#### **Criminal history question**

Employers may not require applicant to disclose or reveal criminal record information or other criminal accusation, conduct a criminal record check or otherwise make any criminal history inquiry until after a conditional offer of employment has been extended.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements are imposed upon employers. The law does state that it should not be construed to require any employer to hire someone with a criminal record, nor to limit an employer's ability to choose the most qualified and appropriate applicant for the employment opportunity at hand.

#### **Enforcement**

Individuals may file a complaint with the Baltimore Community Relations Commission. The Commission may award back pay for lost wages, reinstatement, compensatory damages and reasonable attorney's fees. The final decision of the Commission may be reviewed by the Circuit Court for Baltimore City upon petition. Any person who violates the law is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than \$500 or imprisonment for not more than 90 days or both for each offense.

## MONTGOMERY COUNTY, MARYLAND

### **Montgomery County Code, Chapter 27, Article XII “Fair Criminal Record Screening Standards”**

### **Bill 35-20, “Human Rights and Civil Liberties-Fair Criminal Record Screening Standards-Amendments”**

Applies to any employers doing business in the County that employs 1 or more persons full-time in the County. Employment includes any work for compensation and any form of vocational or educational training, with or without compensation.

#### **Criminal history question**

Employers may not require an applicant to disclose arrest or conviction records on an employment application. Employers may also not inquire into criminal history or conduct a criminal record check until after a conditional offer has been extended to the applicant. Employers are prohibited for inquiring into certain criminal records, such as first-time convictions of trespassing, disturbance of the peace, and assault of the second-degree charges. Additionally, employers cannot ask about a conviction of a misdemeanor if at least 3 years have passed since the date of conviction and the date of incarceration ended. Employers are also prohibited from asking applicants about expunged records. Employers cannot consider or base a hiring decision or promotion on any of these items.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

If an employer intends to rescind a conditional offer based on an arrest or conviction record, the employer first must: provide the individual with a copy of any criminal record report, notify the individual of the employer’s intention to rescind the conditional offer and the items that are the basis for that decision, and delay rescinding the conditional offer for seven (7) days to permit the individual to provide notice of any inaccuracies on the report. Following that process, if the employer decides to rescind the conditional offer based on the arrest or conviction record, the individual must be notified of the decision in writing.

#### **Enforcement**

Individuals may file a complaint with the Executive Director of the Office of Human Rights. Employers must implement regulations to ensure prospective employees and employers are informed on their rights and responsibilities under the law.



## PRINCE GEORGE'S COUNTY, MARYLAND

### **Title 17, the Public Local Laws of Prince George's County, Subtitle 2, Division 12, Subdivision 10, "Fair Criminal Record Screening Standards"; Rules and Regulations; Fair Chance Law Amendments**

Applies to employers with 25 or more employees full-time in the County. Effective September 16, 2024: the law will apply to employers with 10 or more employees full-time in the County.

#### **Criminal history question**

Employers may not require an applicant to disclose criminal history information on an employment application. Employers also may not inquire into criminal history, require criminal history to be disclosed or conduct a criminal record check until after the conclusion of the first interview.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

Effective September 16, 2024: employers are prohibited from inquiring into or considering the following:

- Convictions where the sentence was completed:
  - For a non-violent felony, at least five (5) years or sixty (60) months ago
  - For a misdemeanor, at least thirty (30) months ago
- Arrests that did not result in a conviction, except where the result was probation before judgment (which shall be treated as misdemeanors for the purpose of this law)
- Arrests or convictions for possession of marijuana, cannabis, or cannabis-related materials or paraphernalia, provided any such sentence has been completed, unless it was a conviction that included an intent to distribute

Employers are prohibited from conducting background checks that do not conform to the above.

In addition:

- Employers that deny employment to applicants based on criminal history must retain up-to-date and complete records of the names, addresses, employment applications, descriptions of position applied for, selection processes, denial or notification letters, race, national origin, gender and age of each applicant so denied for a period of three (3) years.
- Employers may not retaliate against individuals for opposing any violations or filing a complaint.

### Adverse Action

Employers must conduct an individualized assessment (considering specific offenses that may demonstrate unfitness to perform the duties of the position, the time elapsed since the offense(s) and any evidence of inaccuracies in the record) if making an employment decision based on an individual's arrest or conviction record.

If an employer intends to rescind a conditional offer based on an arrest or conviction record, the employer must:

- Provide the individual with a copy of any criminal record report,
- Notify the individual of the employer's intention to rescind the conditional offer and the items that are the basis for that intention, and
- Delay rescinding the conditional offer for seven (7) days to permit the individual to provide notice of any inaccuracies on the report.

Following that process, if the employer decides to rescind the conditional offer based on the arrest or conviction record, the individual must be notified of the decision in writing.

### **Enforcement**

The Human Relations Commission is responsible for enforcing the law. There is no private cause of action available to individuals.

# MASSACHUSETTS

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## MASSACHUSETTS STATEWIDE

### **Massachusetts General Laws, Chapter 151B, Section 4; CORI Regulations 803 CMR 2.00; Criminal Justice Reform**

Chapter 151B, Section 4 applies to employers with 6 or more employees. The CORI Regulations speak to employer use of “Criminal Offender Record Information” which is defined under the most recent regulations to exclude records obtained from courts. Asurint does not offer a CORI check due to restrictions under the Regulations.

#### **Criminal history question**

Under Chapter 151B, Section 4, 9 and 9 1/2: Employers may not inquire into criminal history information on an initial written application form. Employers may also not inquire into an arrest, detention or disposition where no conviction resulted, a first conviction for the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray or disturbance of the peace, or any misdemeanor conviction where the date of such conviction or completion of any period of incarceration (whichever is later) occurred five or more years prior to the date of application unless the person was convicted of any offense within five years immediately preceding the application.

#### **Effective Oct. 13, 2018**

Criminal justice reforms take effect prohibiting employers from considering any misdemeanor convictions that occurred three or more years prior to the date of the employment application unless the person was convicted within the preceding three years. Additionally, employers may not inquire into or request sealed or expunged records.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

803 CMR 2.18 outlines adverse action requirements based on CORI or “other types of criminal history information received from a source other than the DCJIS”. It is unclear if that applies to adverse action decisions taken by employers based on county court searches for example. The requirements outlined in the Regulations include:

- a) Comply with applicable federal and state laws and regulations;

- b) Notify the subject in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse employment action;
- c) Provide a copy of the subject's CORI or criminal history information to the subject;
- d) Identify the source of the criminal history information;
- e) Provide a copy of the requestors CORI Policy, if applicable;
- f) Identify the information in the subject's CORI or criminal history information that is the basis for the potential adverse action;
- g) Provide the subject with the opportunity to dispute the accuracy of the information contained in the CORI or criminal history information;
- h) When CORI is considered as a part of a potential adverse action, provide the subject with a copy of DCJIS information regarding the process for correcting CORI; and
- i) Document all steps taken to comply with 803 CMR 2.18.

Employers should consult with qualified legal counsel to determine if these requirements apply.

### **Enforcement**

The Massachusetts Commission Against Discrimination is responsible for enforcement. If probable cause is found (meaning there is sufficient evidence to support a conclusion unlawful discrimination occurred) then the parties may attempt to resolve the dispute during conciliation. If that fails, the case proceeds to a public hearing.

# MICHIGAN

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## MICHIGAN STATEWIDE

### **Michigan Senate Bill 0353**

Amendment: This bill amends the existing state law “Local Government Labor Regulatory Limitation Act” which limits local governmental bodies from regulating the terms and conditions of employment in the private sector and is effective June 24, 2018.

### **Criminal History question**

No impact. This legislation was designed to prevent cities and counties from passing ban-the-box ordinances for private sector employers. Existing Michigan law does prohibit employers from asking an applicant about a misdemeanor arrest that did not result in a conviction.

### **Any additional requirements (i.e., adverse action, posting, etc.?)**

No additional requirements.

## GRAND RAPIDS, MICHIGAN

### **Ordinance 2019-43, Human Rights Ordinance**

Applies to any business that employs more than one (1) or more employees in the city.

#### **Criminal history question**

There is no impact to the criminal history question in terms of if it may be asked and when.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

There are no adverse action requirements under the Human Rights Ordinance (HRO). Under the HRO, employers may not have an “outright ban” on prospective employees with a criminal conviction and may also not consider arrest-only information. Employers can consider conviction records on a case-by-case basis taking into account factors such as:

- The nature and severity of the crime.
- The age of the individual at the time of the crime.
- Repeat offenses.
- Employment history maintained before or after the conviction.
- Evidence of rehabilitation efforts.
- If the conviction record poses a demonstrable risk to the health, safety or welfare of persons or property.

Employers are also prohibited from adopting, enforcing or employment any policy or requirement (including distributing any job advertisement) that discriminates against or suggests discrimination against an individual based on a protected class. Retaliation against individuals seeking to enforce the law is also prohibited.

Further, the HRO provides that “[n]o person shall conspire with, assist, coerce or request another person to discriminate in any manner prohibited by this Ordinance.”

“Conviction record” is defined under the HRO as the “history of all criminal convictions of an individual in any jurisdiction, including time served in prison, jail, juvenile detention, probation, rehabilitation or diversionary programs, or placement on a sex offender registry.”

#### **Enforcement**

Individuals may file complaints with the Office of Diversity and Inclusion or bring a private cause of action.

# MINNESOTA

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## MINNESOTA STATEWIDE

### **Minnesota Statutes, Section 364.021**

Applies to employers with one or more employees.

#### **Criminal history question**

Employers may not inquire into or consider criminal records/history until after the applicant has been selected for an interview, or has received a conditional offer of employment (if there is no interview).

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements. Employers are not prohibited from notifying applicants that the law or the employer's policy will disqualify an individual with particular criminal history from employment in particular positions.

#### **Enforcement**

The Minnesota Department of Human Rights is responsible for enforcement and can issue civil penalties. There is no private cause of action.



# MISSOURI

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## COLUMBIA, MISSOURI

### **Article V, “Employment Opportunities for Qualified Applicants”**

Applies to all employers within the city.

#### **Criminal history question**

Prohibits employers from inquiring into whether an applicant has ever been arrested for, charged with or convicted of any crime on an employment application and until the applicant has received a conditional offer of employment. Employers are not prohibited from notifying applicants in writing of the specific offenses that will disqualify them from employment in a particular position.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements. Employers are encouraged to not automatically ban applicants with a criminal history. Employers may make final employment-related decisions based on all of the information available to them, including consideration of the frequency, recentness and severity of a criminal record as well as rehabilitation efforts against the duties and responsibilities of the position.

#### **Enforcement**

The Commission on Human Rights is responsible for enforcement. Any person who violates any provision of the article will be deemed guilty of a misdemeanor and will, upon conviction, be punished by a fine of not more than \$1,000 or imprisonment not exceeding 30 days or both.

## KANSAS CITY, MISSOURI

### **Ordinance 180034**

Applies to employers with six or more employees.

#### **Criminal history question**

Employers cannot inquire into criminal history until the individual is determined to be “otherwise qualified for the position” and been interviewed. Employers can ask about criminal history of all applicants that are in a “final selection pool” of candidates for the position.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

Employers cannot base a hiring or promotion decision on an applicant’s criminal history unless the employer can demonstrate the employment-related decision was made after considering factors such as the frequency, recentness and severity of a criminal record, and that the criminal history is “reasonably related” to the duties and responsibilities of the position.

“Criminal history” includes convictions, plea of guilty/no contest, record of arrests not followed by a valid conviction, annulled or expunged convictions, etc.

#### **Enforcement**

The Ordinance amends the Kansas City Human Relations Act which is enforced by the Kansas City Human Relations Department. Penalties for violations of the Act include: civil penalties, back pay, actual damages and reinstatement.

## ST. LOUIS, MISSOURI

### Ordinance 71074

Applies to employers located in the city of St. Louis with ten (10) or more employees.

#### Criminal history question

Employers cannot inquire into criminal history until the applicant is considered otherwise qualified for the position. The criminal history inquiry may also only take place after the applicant has been interviewed. Employers may also not inquire into or require disclosures of criminal history on initial job applications.

#### Any additional requirements (i.e., adverse action, posting, etc.)?

There are no adverse action requirements imposed by this ordinance. However, employers may not:

1. Base a hiring or promotional decision on criminal history or sentencing unless the employer demonstrates the employment-related decision is based on “all information available”. This includes frequency, recentness and severity, as well as if the criminal history is reasonably related to or bears upon the duties and responsibilities of the position.
2. Publish job advertisements excluding individuals on the basis of criminal history.
3. Include statements excluding applicants on the basis of criminal history in job applications or other forms used in the hiring process.
4. Seek to obtain publicly available information concerning job applicants’ criminal history.

The last prohibition in particular is concerning as it could be interpreted as banning criminal background checks in St. Louis. However, in reviewing City Council meetings it appears that was not the intent of this legislation. Rather, they simply wanted to prevent that type of search until after the interview. Employers should stay tuned on this issue in the event the city issues further clarifications or amends the Ordinance.

#### Enforcement

Individuals may submit complaints to the Civil Rights Enforcement Agency who will then investigate and recommend complaints with merit to the Office of the License Collector (OLC). For the first violation, the OLC will issue a warning or an order requiring the employer to come into compliance within 30 days. For the second violation, the OLC will issue an order requiring the employer to come into compliance within 30 days and a civil penalty. For the third violation, the OLC may decide to revoke the employer’s business operating license.

# NEW JERSEY

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## NEW JERSEY STATEWIDE

### **Opportunity to Compete Act; The Opportunity to Compete Act Rules; SB 3306**

Applies to employers with 15 or more employees over 20 calendar weeks that does business, employs individuals or takes applications within the State. The definition of employee excludes independent contractors, but includes interns and apprentices. Employment includes temporary or seasonal work, contingent work, and work through the services of a temporary or other employment agency. The physical location of the prospective employment must be in whole or substantial part within the State for the Act to apply to that individual (meaning at least 50 percent of the individual's work hours take place in New Jersey); however, all employees – whether they work inside or outside of New Jersey – contribute to the employer's total employee count.

#### **Criminal history question**

Employers may not inquire into or require disclosure of criminal history during the initial employment application process. The initial employment application process means the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy, and ending when an employer has conducted a first interview, whether in person or by any other means of an applicant for employment.

SB 3306 amended New Jersey's ban the box law to prohibit employers from inquiring into expunged criminal records on the initial employment application, or during the initial employment application process.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

There are no adverse action requirements; however, employers also may not publish job advertisements that state candidates with arrest or conviction records will not be considered for employment.

Note, the New Jersey state law contained language pre-empting any local laws which included Newark, New Jersey's former ban the box law.

**Enforcement**

The Department of Labor and Workforce Development is responsible for enforcement and may issue civil penalties. There is no private cause of action.

# NEW MEXICO

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## NEW MEXICO STATEWIDE

### **Senate Bill 96 (amends the Criminal Offender Employment Act)**

Applies to private employers in the state. Effective June 14, 2019.

#### **Criminal history question**

Employers may not inquire into a candidate's arrest or conviction record on an employment application. Employers may consider a candidate's conviction history after reviewing the candidate's application and discussing employment with that individual.

Employers may notify candidates that the law or the employer's policy could disqualify candidates with certain criminal history from employment in particular positions with that employer.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements.

#### **Enforcement**

Candidates may seek relief according to the New Mexico Human Rights Act.



# NEW YORK

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## BUFFALO, NEW YORK

### **Chapter 154, Article V, “Fair Employment Screening”**

Applies to employers with 15 or more employees located within the City. Employment includes an occupation, vocation, job, work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay.

#### **Criminal history question**

Employers may not make any inquiry, or require any person to disclose or reveal any criminal conviction information during the application process, or before a first interview. The application process begins when the applicant inquires into employment and ends when an employer accepts employment application. If an employer does not conduct an interview, the employer must inform the applicant if a criminal background check will be conducted before employment begins.

#### **Any additional requirements (i.e., adverse action, posting, etc.)? No additional requirements.**

Enforcement: There is a private cause of action under this law. Additionally, individuals may file complaints with the Commission on Citizens' Rights and Community Relations. If the Commission determines there is probable cause of a discriminatory practice, the Director of the Commission may request the Corporation Counsel to commence an action against the accused party, in a court of competent jurisdiction, seeking the imposition of penalties.



## NEW YORK, NEW YORK

### Fair Chance Act; Legal Enforcement Guidance

Some protections under the New York City Human Rights Law apply to employers of all sizes, unless an exception applies. Others apply only to employers with four or more employees (which includes the business owner and independent contractors). The Act applies to job applicants and employees equally.

#### Criminal history question

Employers may not inquire into pending arrest information or criminal conviction records until after extending a conditional offer of employment. Employers also may not conduct a search of publicly available records or obtain a criminal background check until the conditional offer is extended. Additionally, employers cannot take into account any inadvertently disclosed or discovered criminal history information until an offer is extended.

A “conditional offer of employment” is defined as an offer of employment, promotion or transfer which may only be revoked based on one of the following: 1. The results of a criminal background check, 2. The results of a medical exam as permitted by the Americans with Disabilities Act of 1990 or 3. Other information the employer could not have reasonably known before making the conditional offer if the employer can demonstrate it would not have extended the offer regardless of the criminal background check results. The Guidance states that “[e]mployers who request background checks on applicants should first receive the non-criminal information, evaluate it, and then receive and evaluate the criminal information.”

For temporary help firms, a conditional offer is an offer to place an individual in the firm’s labor pool. Temporary help firms may only consider the minimum skill requirements and basic qualifications necessary for placement in the labor pool, and cannot aid or abet an employer’s discriminatory hiring practices.

#### Any additional requirements (i.e., adverse action, posting, etc.)?

From a disclosure and authorization form perspective, according to the Guidance, “[e]mployers should omit mention of a criminal background check when seeking an applicant’s authorization for an employment related background check prior to a conditional offer.” Instead, the Guidance encourages employers to use the terms such as “consumer report” or “investigative consumer report” versus “background check” prior to a conditional offer. Once a criminal (and/or MVR) check is sought, the employer must provide the candidate notice and obtain their authorization.

Under the Rules, there are several per se violations employers can commit which means that even if no adverse employment decision was made, simply doing any one of the following can lead to liability:

- Including any solicitation, advertisement, policy or publication any limitation or specification regarding criminal history. This includes, but is not limited to, advertisements and employment applications containing phrases such as: “no felonies,” “background check required,” and “must have clean record.”
- Using employment applications that require applicants to grant permission to conduct a background check or provide information regarding criminal history prior to a conditional offer.
- Making any statement or inquiry relating to the applicant’s pending arrest or criminal conviction before a conditional offer.
- Using within the City a standard form, such as a boilerplate job application, intended to be used across multiple jurisdictions that requests or refers to criminal history. Disclaimers or other language indicating that applicants should not answer specific questions if applying for a position that is subject to the Human Rights Law do not shield an employer from liability.
- Failing to comply with the requirements of section 8-107(11-a) of the Human Rights Law, when they are applicable: (1) to provide the applicant a written copy of any inquiry an employer conducted into the applicant’s criminal history; (2) to share with the applicant a written copy of the employer’s Article 23-A analysis; or (3) to hold the prospective position open for at least three business days from the date of an applicant’s receipt of both the inquiry and analysis.
- Requiring applicants or employees to disclose an arrest that, at the time disclosure is required, has resulted in a non-conviction (means any arrest or criminal accusation not currently pending that was terminated in favor of the individual, adjudicated as a youthful offender, is a non-criminal offense that has been sealed or is a sealed criminal conviction).

### Adverse Action

If an employer may not hire an individual based on criminal history information, several steps must be taken. The employer needs to determine if there is a direct relationship between the applicant’s conviction history or pending case and the job or show that employing the applicant would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. If neither of these apply, arguably the candidate must be hired.

To conduct this analysis, employers should gather information necessary to assess the relevant factors including for the Article 23-A process for convictions. If there are pending cases involved, employers also need to conduct an analysis using the NYC Fair Chance Factors which are similar to but not identical to the Article 23-A factors. If an applicant has both a conviction history and a pending case, the employer must separately analyze each according to the relevant set of factors.

The Guidance notes that employers cannot ignore evidence favorable to the applicant and must make a reasoned evaluation of each relevant factor.

After evaluating the factors, the employer must then follow the Fair Chance Process. It must:

1. Provide the applicant a copy of the report, written copy of the Article 23-A analysis and Fair Chance Act Notice;
2. Provide the applicant at least 5 business days from receipt of the information to respond (during which time another person cannot be permanently placed in the position); and
3. Consider additional information provided by the applicant including whether that changes its Article 23-A analysis.

If the time elapses and no new information is provided and there are no known errors on the background report, then the employer may move forward with making its decision final at which point it must notify the applicant in writing (i.e., send the final adverse action letter).

If there are errors on the background check, the applicant should notify the employer and the employer must then conduct the Fair Chance Analysis on the corrected criminal background check information.

Additional resources are available for the [Fair Chance Act](#) including the [Fair Chance Act Notice](#) and [FAQs](#).

### **Enforcement**

The New York City Commission on Human Rights is responsible for enforcement. An early resolution process was created by the Rules for per se violations; however, this process is only available for employers with 50 or less employees.

There is also a rebuttable presumption under the Rules than an employer was motivated by an applicant's criminal history if it revokes a conditional offer of employment without following the Fair Chance Process.

## ROCHESTER, NEW YORK

### **Chapter 63, Article II of the City of Rochester Municipal Code**

Applies to employers with four (4) or more employees and includes temporary, job placement, referral or other employment agencies. For the law to apply, the position being filled must be performed primarily within the city.

#### **Criminal history question**

Employers may not inquire into or require disclosure of prior criminal convictions during the initial application process. The “application process” begins when the applicant inquires about the employment sought and ends when an employer has conducted an initial employment interview or made a conditional offer of employment. An interview is defined as: “Any direct contact by the employer with the applicant, whether in person or by telephone, to discuss the employment being sought or the applicant’s qualifications.”

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No adverse action requirements. However, if an employer does not conduct an interview, that employer must inform the applicant whether a criminal background check will be conducted before employment is to begin.

Additionally, the law requires employers to comply with Article 23-A of the New York State Correction Law and the Fair Credit Reporting Act, and does not limit an employer’s authority to withdraw conditional offers of employment for any lawful reason, including the determination that the candidate has a conviction that bears a direct relationship to the duties and responsibilities of the position sought, or that hiring would pose an unreasonable risk to property or to the safety of individuals or the general public.

#### **Enforcement**

The Corporation Counsel may bring an action to restrain or prevent any violation of the law. Individuals are also afforded a private cause of action, but must bring a claim within one year after the alleged violation.

## SUFFOLK COUNTY, NEW YORK

### **Suffolk County, NY Code § 528-7(A)(12); Introductory Resolution 1019-2020**

NY Code § 528-7(A)(12): Applies to employers with four (4) or more employees.  
Introductory Resolution 1019-2020: Applies to employers with fifteen (15) or more employees.

#### **Criminal history question**

NY Code § 528-7(A)(12): Unless specifically required or permitted by statute, employers may not inquire into (whether on an employment application or otherwise), take adverse action based on or require an individual to divulge any information pertaining to any arrest or criminal accusation that is not pending. The prohibition also includes convictions that are sealed.

Introductory Resolution 1019-2020: May not inquire into criminal convictions on a preliminary employment application. The application process begins when an applicant inquires about employment and ends when the employer accepts an employment application. Employers may inquire into criminal conviction information after a first interview. If an interview is not conducted, employers must inform applicants whether a criminal background check will be conducted.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

NY Code § 528-7(A)(12): Employers must comply with Article 23-A of the New York State Correction Law. As outlined in the county-level legislation, this means employers may not deny employment to an individual by reason of them being convicted of one or more criminal offenses, or by reason of a finding or by reason of a finding of a lack of "good moral character" which is based upon his or her having been convicted of one or more criminal offenses (if either leads to a violation of Article 23-A).

There is a rebuttable presumption in favor of excluding from evidence the prior incarceration or conviction of any individual, in a case alleging that the employer has been negligent in hiring or retaining an applicant or employee, or supervising a hiring manager, if the employer can demonstrate their compliance with the NY Correction Law, and made a reasonable, good faith determination that such factors militate in favor of hire or retention of that applicant or employee.

Introductory Resolution 1019-2020: No additional requirements beyond the requirement to comply with Article 23-A of the New York State Corrections Law when considering criminal history information in relation to an employment decision.

**Enforcement**

NY Code § 528-7(A)(12): Individuals may file a claim with the Suffolk County Human Rights Commission.

Introductory Resolution 1019-2020: Individuals are granted a private right of action under the law and may also file a complaint with the Human Right Commission.

## WESTCHESTER COUNTY, NEW YORK

### Local Law 10913

Applies to all private employers with limited exceptions accounted for in the law. The law takes effect 90 days after County Executive George Latimer signs the legislation.

### Criminal history question

Employers may not include criminal convictions or arrests on employment applications. Employers must also ensure their job advertisements do not contain any specifications or limitations regarding criminal history. Employers may ask about a candidate's criminal history after an employment application is submitted.

### Any additional requirements (i.e., adverse action, posting, etc.)?

Before taking any adverse employment action (such as not hiring an individual) based on the candidate's criminal history, employers must comply with New York's Article 23-A correction law which includes looking at several specific factors in relation to the criminal conviction. Employers must provide this analysis in writing along with the reasons for their decision to candidates upon request.

### Enforcement

The Westchester County Human Rights Commission is responsible for enforcement.

*The preceding is offered as general educational information and does not constitute legal advice. Consultation with qualified legal counsel is recommended for all employment law matters.*

# OREGON

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## OREGON STATEWIDE

### **659A.360 Restricting criminal conviction inquiries**

Applies to all private employers within the State, but does not impact volunteers.

#### **Criminal history question**

Employers are prohibited from excluding an individual from an initial interview based solely on the existence of a past criminal conviction. Employers may not require individuals to disclose criminal conviction information on an employment application, prior to an initial interview or, if no interview is conducted, prior to extending a conditional offer of employment.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements. The law makes clear that employers are not prohibited from considering an applicant's criminal conviction history when making a hiring decision.

#### **Enforcement**

The Oregon Bureau of Labor and Industries is responsible for enforcement.



## PORTLAND, OREGON

### Chapter 23.10 Removing Barriers to Employment; Administrative Rules

Applies to private employers within the city that have six (6) or more employees where the position is being performed a majority of the time within the City. Employment includes full-time, part-time, temporary or seasonal positions. The law does not apply to volunteer positions.

#### Criminal history question

Employers may not inquire into a candidate's criminal history or perform a criminal background check until after a conditional offer of employment has been extended. If the applicant voluntarily discloses criminal history before a conditional offer, the employer must disregard that information and take reasonable steps to prevent further disclosure or dissemination of that information.

Employers may rescind a conditional offer based upon a candidate's criminal history only after determining "in good faith" that the offense/conduct was "job-related" and "consistent with business necessity".

#### Any additional requirements (i.e., adverse action, posting, etc.)?

Employers may not consider the following when making hiring decisions:

1. An arrest that did not lead to a conviction, except for unresolved or pending charges;
2. Convictions that have been judicially voided or expunged; or
3. Charges that were resolved through completion of a diversion or deferral of judgment program for offenses not involving physical harm or attempted physical harm.

#### Adverse Action:

Employers must conduct an individualized assessment that analyzes: the nature and gravity of the criminal offense, the time that has elapsed since the offense took place and the nature of the employment held/sought. If the employer wishes to rescind the conditional offer following this analysis, it must first provide the candidate written notice identifying the relevant criminal convictions that are the basis for the decision.

Employers may use the form attached to the Administrative Rules as Exhibit B to notify the applicant of the rescission of a conditional offer.

**Enforcement:**

The City may contract with the Oregon's Bureau of Labor and Industries to enforce the law. There is no private cause of action.

# PENNSYLVANIA

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## LEHIGH COUNTY

### **Anti-Discrimination Ordinance**

Applies to all employers with at least one employee (effective June 1, 2024).

#### **Criminal history question**

Employers may not ask whether the applicant has ever been convicted of a crime on an employment application. Employers may include in its job requirements that an applicant have a clean driving record or be able to pass a child abuse clearance check.

Employers may not require a job applicant to disclose criminal convictions until after an initial interview.

Employers are prohibited from considering conviction records which do not relate to an applicant's suitability for employment. After a first interview, employers may use background checks and prior history to determine suitability for employment. Pennsylvania State law requires employers to provide written notification if a denial of employment was based in whole or in part on the applicant's criminal history. Failure to provide such notice will also be a violation of the ordinance.

#### **Enforcement**

Individuals may file complaints with the Human Relations Commission who will determine if the complaint should be investigated. The ordinance also allows for a private right of action if the Commission dismisses the complaint.

## PHILADELPHIA, PENNSYLVANIA

### Chapter 9-3500. Fair Criminal Record Screening Standards (FCRSS)

Applies to all employers with at least one employee in the City. Employment includes any occupation, vocation, job, work for pay or employment, including temporary or seasonal work, contracted work, contingent work and worth through the services of a temporary or other employment agency.

The law applies to job applicants and current employees.

#### Criminal history question

Employers may not inquire into an individual's criminal history until after a conditional offer of employment has been extended. The inclusion of a criminal history inquiry on an employment application is "unlawful" whether or not the applicants are told they need not answer the question. Employers may also not ask any question before a conditional offer regarding the applicant's willingness to consent to a background check.

Employers may inquire into an employee's pending criminal charges. when the employer "possesses reasonably reliable information" that indicates a pending charge relates to the employee's job duties. Employers may require employees to report pending criminal charges provided there is a written policy outlining what offenses are reportable. Employers may not take adverse action against an employee unless the pending criminal charge bears a relationship to the position's duties where the continued employment would present an unacceptable risk to the business, coworkers or customers.

#### Any additional requirements (i.e., adverse action, posting, etc.)?

- It is an "unlawful discriminatory practice" for a private employer to knowingly and intentionally make any inquiry about or take any adverse action against an individual on the basis of any arrest or criminal accusation that is not pending and did not result in a conviction. It is also an unlawful discriminatory practice to reject an applicant or employee based on a conviction that resulted in exoneration. Exoneration means the reversal or vacation of a conviction by pardon, acquittal, dismissal or other post-conviction re-examination of the case by a court or other authorized government official.
- Employers may only consider an individual's conviction record for a period of seven (7) years from the date of the inquiry only to the extent that the conviction did not result in exoneration. Periods of incarceration are not included in the calculation of the seven (7) year period.
- Employers must post a summary of the law's requirements in a conspicuous place on the employer's website and premises.

- Employers may not automatically exclude individuals based on criminal conviction history.

### **Adverse Action:**

Before denying an applicant employment based on a criminal record, the employer must conduct an individualized assessment, taking into account: the nature of the offense, time passed since the offense, individual's employment history before and after the offense in addition to any period of incarceration, the particular duties of the job position, character and/or employment references provided by the individual, the individual's employment history before and after the offense and any period of incarceration, and any evidence of the individual's rehabilitation.

Following the individualized assessment, if an employer chooses to take adverse action, it must notify the individual in writing including the basis for that decision and provide a copy of the criminal history report. The employer must then allow the individual 10 business days to provide evidence of an inaccuracy or a further explanation.

### **Enforcement**

The Philadelphia Commission on Human Relations is responsible for enforcing the law. Each violation of the law constitutes a "Class III" offense and is subject to fines. There is also a private cause of action for individuals; however, they must first report the violation to the Commission within 300 calendar days of the unlawful act and the Commission must conclude that it has not found sufficient evidence of a violation to proceed further with an investigation. Individuals will be able to recover liquidated damages which equate to the maximum allowable salary for a one month period not to exceed \$5,000 (as opposed to punitive damages).

# RHODE ISLAND

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## RHODE ISLAND STATEWIDE

### **General Laws, Chapter 28-5, Section 28-5-7**

Applies to employers with four (4) or more employees.

#### **Criminal history question**

Employers may not include a criminal history question on an employment application. Employers may ask about criminal convictions at the first interview or thereafter, in accordance with all applicable state and federal laws.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements.

#### **Enforcement**

The Commission for Human Rights is responsible for enforcement.

# TEXAS

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## **Important Note:**

Effective September 1, 2023, **Texas House Bill 2127** goes into effect eliminating various regulations on city and county level that exceed or are in conflict with state law. Arguably this includes the ban the box ordinances in Austin and De Soto. Asurint has removed content related to those cities from this whitepaper. We encourage employers to consult with qualified legal counsel on the full impact of HB 2127.

# VERMONT

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## VERMONT STATEWIDE

### **Title 21: Labor, Chapter 5: Employment Practices, Subchapter 6: Fair Employment Practices, § 495j. Criminal history records; employment applications**

Applies to employers with one or more employees performing services in the State.

#### **Criminal history question**

Employers may not inquire into an individual's criminal history on an initial employment application; however, an employer may ask about criminal history in an interview or once the prospective employee has been deemed otherwise qualified for the position.

If the employer inquires into an individual's criminal history record, the prospective employee, if still eligible for the position under applicable federal or State law, must be afforded an opportunity to explain the information and the circumstances regarding any convictions, including post-conviction rehabilitation.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

No additional requirements.

#### **Enforcement**

The Attorney General or a State's Attorney may enforce the provisions of the law. Employers may be assessed a civil penalty per violation.



# VIRGIN ISLANDS

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## ISLANDWIDE

### **Bill No. 35-0115**

Applies to all private employers including vendors and contractors.

#### **Criminal history question**

Unless otherwise provided by local and federal law, employers may not inquire about an applicant's conviction history before the applicant is determined to be otherwise qualified for the position. Job applications may not contain a box or inquiry regarding prior convictions.

Criminal background checks and other methods of seeking out criminal history information may not be conducted until after extending the applicant a conditional offer of employment.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

Employment applications must include a statement that: "A record of conviction will not exclude an applicant from being eligible for the position. Factors that may be examined include: (1) The rational relationship of the nature of the offense to the duties and responsibilities of the position; and (2) Evidence of the rehabilitation of the applicant."

An employer may rescind a conditional offer of employment for an applicant who has pending charges filed within the last six months or has been convicted of a felony conviction in the past five years or a misdemeanor conviction that occurred in the past three years only after considering: (1) Whether the criminal offense charge relates to the responsibilities of the position for which the person has applied; and (2) Any documentation or information demonstrating the rehabilitation of the applicant.

There are limited exceptions under the law including if a local or federal law requires the applicant to be rejected based on criminal history. Employers are encouraged to review the text of the law for the full list of exceptions.

#### **Enforcement**

Individuals may bring an action to recover actual damages or \$200 – whichever is greater – plus costs and reasonable attorney's fees as a civil penalty. Individuals who violate the law may also be subject to criminal penalties including imprisonment not to exceed six (6) months, a fine not to exceed \$500, or both.

# WASHINGTON

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## WASHINGTON STATEWIDE

### **House Bill 1298, "Washington Fair Chance Act"**

Applies to employers with one or more employees performing services in the State.

#### **Criminal history question**

Employers may not inquire into criminal history, either verbally or in writing, until the applicant is determined to be "otherwise qualified." The law defines "otherwise qualified" as: "the applicant meets the basic criteria for the position as set out in the advertisement or job description without consideration of a criminal record." Employers may also not ask about criminal history on an employment application.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

- Employers may not advertise employment openings in a way that excludes people with criminal records from applying (for example: "no felons" or "no criminal background").
- Employers may not implement any policy or practice that automatically or categorically excludes individuals with a criminal record from consideration prior to an initial determination that the application is otherwise qualified for the position.

#### **Enforcement**

Washington's Attorney General will enforce the provisions of the law. The law does not allow for a private right of action.

## SEATTLE, WASHINGTON

### **Chapter 14.17, “The Use of Criminal History in Employment Decisions”; Practices for Administering Use of Criminal History in Employment Decisions Under SMC 14.17 (Chapter 80)**

Applies to employers with one or more employees, and includes full-time, part-time and temporary workers. An employee is covered by the law when the physical location of services performed for the employer is in whole or part (at least 50 percent of the time) within the geographic boundaries of the City.

The Rules expand on the definition of “substantial part of services in Seattle” to outline:

**Employee location.** An employee performs a substantial part of his or her services in Seattle if the employee works at least 50 percent of the time in Seattle or if the employer or employee reasonably expects the employee to work at least 50 percent of the time in Seattle.

**Employer location.** The Ordinance applies to employees who perform 50 percent or more of their employment services in Seattle regardless of the location of their employer.

**Stopping in Seattle.** The Ordinance applies to employees who stop in Seattle for work purposes to perform 50 percent or more of their employment services in Seattle.

**Seasonal employees.** The Ordinance applies to seasonal employees who perform 50 percent or more of their employment services in Seattle over the course of employment with a single employer.

**Temporary employees.** The Ordinance applies to temporary employees who perform 50 percent or more of their employment services in Seattle over the course of their temporary employment with a single employer. A temporary worker supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, shall be an employee of the staffing agency for all purposes under the Ordinance.

#### **Criminal history question**

Employers may not perform a criminal background check or inquire into criminal history until after completing an initial screening of applications or resumes to eliminate unqualified applicants. An initial screening consists of a review of an applicant’s qualifications to ensure that the applicant possesses the minimum qualifications that are necessary for the job.

#### **Any additional requirements (i.e., adverse action, posting, etc.)?**

- Employers may not advertise, publicize or implement any policy or practice that automatically or categorically excludes all individuals with any arrest or conviction record from any employment position that will be performed in whole or in substantial part (at least 50 percent of the time) within the City.

- Employers must display a poster in a conspicuous and accessible location where any of their employees work in English and in the primary language of the employee(s) at the particular workplace.
- Employers may not retaliate against individuals for exercising their rights.

### Adverse Action:

Employers may not take adverse action based solely on an individual's arrest record; however, employers may inquire into the conduct related to the arrest record and may then take adverse action based solely on the conduct if there is a legitimate business reason. Employers may not take adverse action based solely on an individual's criminal conviction record or pending charges unless there is a legitimate business reason to do so.

A "legitimate business reason" shall exist where, based on information known to the employer at the time the employment decision is made, the employer believes in good faith that the nature of the criminal conduct underlying the conviction or the pending criminal charge either:

- Will have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held, or
- Will harm or cause injury to people, property, business reputation or business assets, and the employer has considered the following factors:
  1. the seriousness of the underlying criminal conviction or pending criminal charge;
  2. the number and types of convictions or pending criminal charges;
  3. the time that has elapsed since the conviction or pending criminal charge, excluding periods of incarceration;
  4. any verifiable information related to the individual's rehabilitation or good conduct, provided by the individual;
  5. the specific duties and responsibilities of the position sought or held; and
  6. the place and manner in which the position will be performed.

Before taking adverse action, employers must:

- Identify the record or information on which they are relying and provide the individual with an opportunity to explain or correct the information. This notice should be provided in a "reasonable manner most likely to reach the applicant or employee in the shortest amount of time."
- Employers must hold the position open for a minimum of two (2) business days.
  1. After two (2) business days employers may – but are not required – to hold open the position until the pending charge is resolved or until questions about an individual's criminal convictions or conduct relating to an arrest are resolved.

### Enforcement

The Office of Labor Standards is responsible for enforcement.

## SPOKANE, WASHINGTON

### Spokane Muni. Code §09.02.050

Applies to any employer that is acting directly or indirectly within the city limits of Spokane, and is hiring a person to perform a majority of his/her services within the City. The definition includes temporary staffing agencies, and job placement, referral and employment agencies.

#### Criminal history question

Employers may not inquire into criminal history on an employment application. Additionally, employers may not inquire orally or in writing, or receive information through a criminal background check about an individual's arrest or conviction record until after there is an in-person or video interview, or until after the individual received a conditional offer of employment.

#### Any additional requirements (i.e., adverse action, posting, etc.)?

- Employers may not advertise job openings in a way that excludes people with arrest or conviction records from applying, such as using language as "no felons", "no criminal background", etc.
- Employers may not disqualify an individual from applicable employment solely because of a prior arrest or conviction unless the conviction is related to significant duties of the job or disqualification is otherwise allowed under this law.
- Employers may not reject or disqualify an individual for failing to disclose a criminal record prior to initially determining if the individual is otherwise qualified for the position.

The law specifically states that it should not be interpreted as protecting criminal conduct or interpreted as imposing an obligation on the part of an employer to provide accommodations or job modifications in order to facilitate the employment or continued employment of an applicant with an arrest or conviction record, or who is facing pending criminal charges. The law also states that nothing should be construed as prohibiting an employer from inquiring into or obtaining criminal background information, and considering such information in a hiring decision provided they do so at the appropriate time.

#### Enforcement

Violation of the law is a Class 1 Civil Infraction which can result in a \$261 fine for each occurrence.



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Our clients leverage better background checks to reduce manual workloads, minimize compliance risk, promote a safer workplace, and drive insights to boost hiring and recruitment success.

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