

CRIMINAL RECORD? YOU CAN WORK WITH THAT.

Criminal history can't be part of the hiring process until after a job offer. That means you get a fair chance, and employers get to consider more candidates.

Employers cannot ask you about your criminal history until after they offer you a job. After an employer offers you a job, they can ask about and consider your criminal history. If an employer decides that they no longer want to hire you after finding out about your record, the employer must follow a specific process. This guide explains that process and provides you with information about your rights both before and after getting a job offer. You have the same rights under this law in hiring or any other employment decision, like promotions. However, this guide focuses on the job application process.

□ BEFORE A JOB OFFER

Your criminal record is off-limits until an employer offers you a job.

Employers cannot place job ads that mention arrests, convictions, or having a clean record, such as “no felons,” “background check required,” or “must have clean record.”

Job applications cannot have questions about criminal records and cannot ask you to authorize a background check. Employers cannot ask you questions about your criminal record. If you are asked about your record, your answer cannot be used against you. Employers cannot run a background check on you until after a conditional offer of employment.

□ AFTER A JOB OFFER

Once an employer offers you a job, they can ask about and consider your criminal record.

Employers can ask you if you have any criminal convictions. You must disclose felony and misdemeanor convictions, no matter how old they are.

Employers can require you to authorize a background check. If you do not authorize a background check, an employer can refuse to hire you.

There are three things **employers can never ask about, and you should not disclose even if asked:**

1. Any arrest where you were never convicted;
2. Any convictions that are sealed. Convictions are usually sealed when you:
 - Are convicted of a non-criminal violation, like disorderly conduct;
 - Complete a court-ordered drug treatment program; or
 - Are adjudicated as a youthful offender or juvenile delinquent.
3. Most cases adjourned in contemplation of dismissal (“ACD”).

Even if an employer finds out about this information, it cannot be used against you. The only exception is if you are applying to be a police or peace officer.

□ BEFORE A FINAL EMPLOYMENT DECISION

Once an employer finds out about your criminal record, the employer can decide not to hire you. But before making a final decision, an employer must do three things:

1. Give you a copy of any background check it did on you;
2. Evaluate you by considering specific factors and share that written evaluation with you; and

3. Hold the job open for at least three business days after the employer communicates its decision to you so that you can respond to the decision.

Employers cannot deny you work just because you have a criminal record. Before deciding not to hire you because of your criminal record, employers must consider these factors:

- That New York public policy encourages the employment of people with criminal records;
- The specific duties and responsibilities of the job;
- The bearing, if any, of your criminal record on your ability to do the job;
- The amount of time that has passed since the events that led to your criminal conviction;
- Your age when you engaged in criminal conduct;
- The seriousness of your conviction record;
- Any positive information you have in your favor. This includes evidence that you attended school, job training, or counseling; had past employment; or are involved with your community. These can include letters of recommendation from people who know you, like teachers, counselors, supervisors, clergy, and parole or probation officers.
- If you have a certificate of relief from disabilities or a certificate of good conduct, an employer **must** presume you are rehabilitated for your convictions.

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

1. because a **direct relationship** exists between your conviction and the job you want; or
2. because your conviction history creates an **unreasonable risk** to people or property.

The employer must send you its reasoning in writing, along with the background check it used. After receiving these materials, you have three business days to respond to address the employer's concerns.

Do all employers have to follow the Fair Chance Act?

No, some employers are required by law to check your criminal record. Other employers are required by law to not hire people with certain serious convictions. These employers do not have to follow the FCA. In addition, law enforcement-related city agencies do not have to follow the FCA.

What should I do if I believe an employer did not follow the rules described here?

Call 311 and ask for the Commission on Human Rights. You can leave an anonymous tip, or you can file a complaint about what happened to you. If the employer is found to have broken the law, you could recover lost wages or other damages and the employer may have to pay a fine.