

Fair-Chance Hiring For Workers With Criminal Records



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THE PROBLEM

Nearly one in three adults in the United States—or 70 million people—have some type of criminal record that will show up on a routine background check for employment.¹ As background check screening becomes more common in employment, the stigma of the record creates a challenging barrier for many jobseekers—even years after the offense. Men with conviction records accounted for approximately 34 percent of the nonworking men of prime working age, in one survey.²

The existence of a criminal record reduces the likelihood of a job callback by 50 percent among equally qualified applicants³, which is even more pronounced for Latino and Black applicants.⁴ The widespread, excessive use of background checks thus exacerbates racial and economic inequality. And because millions of people with records have poor job prospects, the nation's gross domestic product was reduced by over \$57 billion in just one year.⁵

THE SOLUTION

Providing pathways to employment for people with records can dramatically improve people's lives, increase public safety, and generate measurable economic returns in local communities.⁶ One of the most promising hiring reforms, gaining bipartisan support and national attention, is "fair chance" hiring. One component of a fair-chance hiring policy is to "ban the box" that asks about convictions on a job application. The "box" discourages people from applying and artificially narrows the pool of qualified workers. Too often, employers automatically reject applications with the checked-box, regardless of the applicant's qualifications.

In addition to banning the box, fair-chance hiring integrates federal best practice guidelines on the use of arrest and conviction records in employment decisions, including evaluating conviction job-relatedness, the time passed since

the offense, and rehabilitation. In addition, employers should provide applicants with the opportunity to dispute the accuracy or relevance of any records.

Fair-chance hiring policies help to lift the stigma of the record and allow a person's skills and qualifications to come first. Referring to ban-the-box policies and federal guidelines, researchers found that "[s]uch laws give jobseekers the chance to make contact with prospective employers—contact that this study suggests is crucial to the hiring process." Indeed, "[i]f applicants can get a foot in the door, . . . then they gain the opportunity to overcome negative stereotypes and reveal positively valued traits."⁷

Where local entities have tracked hiring, they have found a measurable impact. In **Durham County**, North Carolina, the number of applicants with criminal records recommended for hire nearly tripled in the two years since its fair hiring policy passed. On average, 96.8 percent of those with records recommended for hire ultimately received the job.⁸

After **Minneapolis** implemented its policy, the city found that removing the conviction disclosure box from initial applications and postponing background checks until a conditional offer of employment decreased the amount of transactional work for staff, did not slow down the hiring process, and resulted in more than half of applicants with convictions being hired.⁹

The movement for policies to dismantle barriers to employment for workers with records has gained significant traction across the political spectrum. As of September 2015, there were over 100 cities and counties and 19 states that have adopted policies to delay conviction history inquiries in hiring.¹⁰ The policy has been promoted as a best practice by the U.S. Equal Employment Opportunity Commission (EEOC), adopted by major employers like Starbucks, Koch Industries, Home Depot, Walmart and Target, and endorsed by the President's My Brother's Keeper Initiative.¹¹

POLICY ISSUES

To craft a fair-chance policy, including “ban the box,” here are key principles.

Avoid stigmatizing language such as “ex-offenders” or “ex-felons.” Use terms that lead with “people,” such as “people with records.”¹²

A background check may be unnecessary for a job position because most jobs do not involve unsupervised access to sensitive populations or information. Even if a background check is legally mandated, it is unnecessary to exempt a position from the majority of these best practices.

If a background check is necessary, only consider those convictions with a direct relationship to job duties and responsibilities and consider the length of time since the offense. Avoid consideration of records of arrest not followed by a valid conviction. Do not consider sealed or expunged convictions.

Remove conviction inquiries from the job application and delay inquiries until the conditional offer.¹³ The most effective policy is to delay all conviction inquiries, oral or written, until after a conditional offer of employment. Do not include a provision to permit “voluntary disclosure” of record information from the applicant.

If a job applicant is rejected because of a record, inform the applicant. Provide the applicant with written notice of the specific item in the report that is considered job-related and provide the applicant with a copy of the report.

Provide the applicant the right and sufficient time to submit evidence of mitigation or rehabilitation when a record is considered in hiring. Hold the position open until the review is complete.

Expand the fair-chance policy to private employers. To maximize the impact of the fair-chance policy, apply the policy to government contractors and private employers.

Combine data collection and effective enforcement. At a minimum, a government agency should process complaints and audit compliance. Strong penalties for employers and incentives for complainants, such as directing the penalty funds to complainants, or making available significant monetary remedies, will incentivize private employers to comply and jobseekers to come forward. With government contractors, the contract should be rescindable without compliance. Data collection to track disqualifications and hiring will also support enforcement. Plus, agency-directed investigations can

direct resources to high-impact cases.

LANDSCAPE AND RESOURCES

For more information, visit the National Employment Law Project’s fair-chance hiring campaign page¹⁴. Two resources are the Ban the Box State and Local Guide,¹⁵ which documents policies across the country and the Fair Chance – Ban the Box Toolkit,¹⁶ which is a comprehensive resource for advocates. The grassroots organization, All of Us or None, coined the phrase “ban the box” and sparked the movement to remove the check-box. Ban-the-box resources are available on its website.¹⁷

NOTES

1. NELP, *Advancing a Federal Fair Chance Hiring Agenda* (Jan. 2015) at 6.
2. Binyamin Appelbaum, “The Vanishing Male Worker: How America Fell Behind,” *NY Times*, Dec. 11, 2014.
3. D. Pager, *The Mark of a Criminal Record* 108 *Am. J. Soc.* 937, 960 (2003).
4. D. Pager, et al., “Discrimination on a Low-Wage Labor Market: A Field Experiment,” *Am Socio Rev.* 2009 Oct 1; 74(5): 777–799.
5. J. Schmitt & K. Warner, *Ex-offenders and the Labor Market*, CEPR (2010).
6. NELP, *Research Supports Fair Chance Policies* (April 2015).
7. C. Uggen, et al., “The Edge of Stigma: An Experimental Audit of the Effects of Low-Level Criminal Records on Employment,” *Criminology* 52 (4) (2014) at 649–650.
8. D. Atkinson & K. Lockwood, “The Benefits of Ban the Box: A Case Study of Durham, NC,” *SCSJ* (Oct. 2014).
9. Letter from City Council Member Elizabeth Glidden with Attachment of City of Minneapolis Conviction History Summary 2004–2008 YTD (March 16, 2009).
10. NELP, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies to Reduce Barriers to Employment of People with Conviction Records* (Sept. 2015).
11. The EEOC Enforcement Guidance <http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm> on the consideration of criminal records and the President’s initiative, My Brother’s Keeper Task Force, 90-day report <http://www.whitehouse.gov/sites/default/files/docs/053014_mbk_report.pdf> recommended delaying conviction history inquiries. See also NELP’s *Voices in Support* factsheet <http://www.whitehouse.gov/sites/default/files/docs/053014_mbk_report.pdf>.
12. Center for NuLeadership on Urban Solutions, *The Language Letter Campaign*.
13. NELP, *Fair-Chance Hiring Best Practice: Delaying Inquiries Until Conditional Offer*, (Sept. 2015).
14. <http://www.nelp.org/campaign/ensuring-fair-chance-to-work/>
15. <http://www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/>
16. <http://altopolimigra.com/detainers/>
17. <http://www.prisonerswithchildren.org/our-projects/all-of-us-or-none/ban-the-box-campaign/>