

Fair Chance Ordinance for Employers (FCO) FAQs

For Employers and Job Seekers

For Employers:

What is the Los Angeles County Fair Chance Ordinance for Employers?

The Los Angeles County Fair Chance Ordinance for Employers (FCO) was adopted by the Los Angeles County Board of Supervisors on, February 7, 2024. The Ordinance will provide additional rights, protections, and enforcement mechanisms for persons with criminal history seeking employment in the unincorporated Los Angeles County. The County's Fair Chance Ordinance for Employers will complement the States' "Ban-the-Box" law, called the Fair Chance Act, enacted in 2018, which generally prohibits employers with five or more employees from asking about the conviction history of an applicant before making a job offer, and requires employers to perform an individualized assessment regarding an applicant's conviction history before rescinding a job offer.

Under the California FCA, most employers cannot ask any questions about a criminal record before extending a conditional offer, which includes the application and interview process. It is also illegal for employers to have blanket bans that exclude all applicants with criminal records or applicants with certain convictions. With these existing requirements, the County's FCO clarifies applicant rights, introduces additional compliance requirements due to gaps found in the FCA, and improves enforcement by introducing penalties for FCO violators. The FCO will be enforced by the [Department of Consumer and Business Affairs](#).

For any information about the FCO, you may reach out to the [Department of Economic Opportunity](#) who manages the [County's Fair Chance Hiring Campaign](#) which is focused on educating businesses on implementing Fair Chance hiring practices and highlighting the benefits of hiring reentry individuals while informing individuals about their rights and protections under the state and local laws.

If the California Fair Chance Act already exists, how does the LA County Fair Chance Ordinance differ?

While the California Fair Chance Act (FCA) was enacted in 2018 for all of California, multiple agencies have identified issues in its enforcement and found that many employers were still violating the FCA. In response, some local governments adopted their own Fair Chance ordinances, but the County did not have its own. Thus, any violations that occurred in the County were referred to the State or the City of Los Angeles, depending on where the violation occurred. In April of 2022, the County conducted assessments using survey findings from community-based organizations and important gaps were found in the implementation and enforcement of the FCA. As a result, the County created the Fair Chance Ordinance to ensure individuals with a criminal history have fair and equitable access to opportunities for gainful employment in the unincorporated areas of LA County.

Here's how the County's Fair Chance Ordinance differs from the State's Fair Chance Act:

- The governing authority is the LA County Department of Consumer and Business affairs, streamlining the complaint process and keeping the governing authority near the job applicants.



- Following a rescinded job offer, a *written* assessment is required. This prevents employers from groundlessly denying individuals a job with duties that are not related to prior convictions.
- Employers have only five days to respond to an applicant's appeal to a rescinded job offer. This prevents applicants from having to seek other employment while they wait for a response from the potential employer.
- Penalties are created to deter employers from violating the regulations, and the LA County Department of Consumer and Business Affairs is granted authority to impose additional penalties related to licenses.
- A "look-back" period of only 7 years (with certain exceptions), to prevent employers from using old convictions to deny a candidate.
- Prohibiting requests for voluntary and self-disclosure of criminal records.

Who will be affected by the FCO?

Any individual, corporation, partnership, labor organization, group of persons, association, etc., that is located or doing business in the unincorporated areas of the County, and that employs five (5) or more Employees, including any person providing services pursuant to a contract in furtherance of an Employer's business enterprise performing at least two (2) hours of work on average each week within **the unincorporated areas of the County**.

When will the FCO come into effect?

The operative date for administrative enforcement of the Fair Chance Ordinance for Employers will be **Tuesday, September 3, 2024**. This will be when individuals can file a complaint against a potential employer or business with the Department of Consumer and Business Affairs.

What are the unincorporated areas of Los Angeles County?

The unincorporated areas of LA County are communities and areas that are outside the jurisdictional boundaries of incorporated cities, and they include more than 2,600 square miles. They represent two-thirds of the County's area and one-tenth of its population. There are approximately 120 to 125 unincorporated areas.

For a comprehensive list of unincorporated areas of Los Angeles County, please click [here](#).

Why is the FCO being introduced?

The County of Los Angeles is committed to overcoming the stigma and unfair biases associated with personal criminal records when employers are making hiring and employment decisions and seeks to remove barriers to employment that undermine the County's efforts to realize the Care First Community Investment (CFCI) vision, which enhances public health, makes communities safer, and achieves rehabilitative outcomes.

Research shows that formerly incarcerated individuals perform the same as or better than employees without a criminal history, while being more loyal to their employers than their counterparts. Research also shows that finding employment

for formerly incarcerated individuals can enhance public safety outcomes and reduce recidivism. About 1 in 5 Californians have a criminal record, 1 in 3 Americans have a criminal record, and roughly 60,000 formerly incarcerated individuals return to their homes in Los Angeles County each year. With the implicit biases that exist against those with any criminal history, qualified candidates are often unfairly overlooked before they are even interviewed.

What am I prohibited from doing before offering a position of employment?

Prior to the operative date, additional regulations may be added. Under the current FCO, Employers are prohibited from doing the following:

- In job postings, employers can **NOT** include language such as: No Felons, No Convictions, Must Have Clean Background, Must Pass Background Check, etc.
- Employers can **NOT** ask about criminal history before a conditional offer of employment or during the interview process.
- Employers can **NOT** encourage an individual to disclose criminal history or require disclosure of criminal history prior to a conditional offer of employment.
- Employers can **NOT** end an interview or reject an application based on criminal history information that was prematurely obtained prior to a conditional offer of employment.
- Employers can **NOT** end an interview early if an applicant reveals criminal history or reject an application because an individual did not provide criminal history information.
- Employer can **NOT** consider an applicant's conviction that is more than seven (7) years old, measured from the date of disposition. This is considered the look-back period.

What is the look-back period?

A conviction that is more than seven (7) years old, measured from the date of disposition. However, there are exceptions that include, but are not limited to:

- Providing care or services to a minor; in contact with minors as part of their specific job duties; or has supervisory or disciplinary authority over a minor;
- Providing care or services to a dependent adult; in contact with a dependent adult as part of their specific job duties; or has supervisory or disciplinary authority over a dependent adult;
- Provide support services or care to a person sixty-five (65) years or older; or has supervisory authority over a person sixty-five (65) years or older;
- Providing services relating to the administration of public funds or benefits, including eligibility for public funds or public benefits, including but not limited to, fraud, bribery, forgery, embezzlement, receipt of stolen property, theft and/or robbery.

Are there any regulations regarding job postings or job bulletins?

Yes, there are requirements:

- In all job postings, employers **MUST** include language stating that qualified applications with arrest or conviction records will be considered for employment in accordance with the *Los Angeles County Fair Chance Ordinance for Employers* and the *California Fair Chance Act*.
- If an organization prevents the hiring of individuals with a criminal history as required by law, the organization must specify the laws or regulation that impose these restrictions.
- If your organization plans to conduct a review of criminal history after the interview process, the job posting must include a list of all material job duties of the specific position in which you believe a criminal history may have a direct, adverse, and negative relationship potentially resulting in the withdrawal of a conditional offer of employment.

I plan on inquiring about criminal history after a conditional offer of employment is made. What do I have to do to comply?

If you plan on reviewing an applicant's criminal history information, you must provide a notice in writing to the applicant that includes the following:

- A statement that the Conditional Offer of Employment is contingent upon the review of the individual's 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 provided in writing. General statements to justify a criminal history check, such as for "safety concerns" do not meet this requirement and require more detailed justification.
- Discussion of criminal history can only occur after the criminal background check is completed and a copy is provided to the candidate.

I plan on rescinding a conditional job offer due to the applicant's criminal history. What do I need to do to ensure I am complying with the fair chance process?

If an employer intends to rescind a conditional job offer or take any other adverse action based on criminal history, the employer must first conduct an Initial Individualized Assessment, documented in writing, of whether the candidate's criminal history has a direct, adverse, and negative bearing on the person's ability to perform the job duties such that it justifies denial of the job position or adverse action.

- Individualized assessment considerations:



- The nature and gravity of the offense or conduct, including, consideration of whether the harm was to property or people, the degree or severity of the harm or offense, the age of the person when the conduct occurred, and the permanence of the harm or offense;
 - The time that has passed since the offense or conduct and/or completion of the sentence;
 - The nature of the position, including consideration of the specific duties of the job, whether the position offers the opportunity for the same or a similar offense to occur, and whether circumstances leading to the criminal conduct will recur in the job position;
 - If the applicant or employee voluntarily provides any evidence of rehabilitation or mitigating circumstances before or during the initial individualized assessment, that evidence must also be considered.
- If the employer intends to rescind a conditional offer, or take any other adverse action, the employer shall provide a preliminary notice of adverse action.
 - Notice that the intended adverse action is based on review of criminal history;
 - An explanation of the individual's right to respond before the decision becomes final, including that their response may include evidence challenging the accuracy of the criminal history information and/or voluntary submission of evidence of rehabilitation or mitigating circumstances;
 - A copy of the initial individualized assessment;
 - Notice of the disqualifying conviction(s);
 - A copy of the criminal background check report obtained by the employer, if any, and any other information or documentation relating to criminal history.
 - The individual shall have at least five (5) business days to respond to the preliminary notice of adverse action before the employer can make a final decision.
 - Within the 5-day period, if the individual notifies the employer in writing that they 1) dispute the accuracy of the criminal history information and is taking steps to obtain evidence supporting that assertion, or 2) needs additional time to obtain written evidence of rehabilitation or mitigating circumstances, the individual will be provided at least ten (10) additional business days;
 - In lieu of submission of any written materials, upon request, and employer shall provide the applicant or employee with an opportunity present evidence of rehabilitation or mitigating circumstance orally to the employer, via in-person, virtual, or telephone contact.
 - The employer will perform a second individualized assessment, documented in writing, assessing the same factors contained in the initial individualized assessment.
 - Evidence of rehabilitation or mitigating circumstances;



- Any documents disputing the accuracy of the criminal history information, and/or documents or information providing an explanation regarding criminal history information.
- If after the second individualized assessment, the employer makes a final decision to withdraw the conditional offer or take other adverse action, the employer must send written notice.
 - A copy of the second individualized assessment;
 - Notice of the disqualifying conviction(s);
 - Information regarding any existing procedure the employer has for the person to challenge the decision or request consideration;
 - Notice of the applicant's or employee's right to file a complaint with the Department of Consumer and Business Affairs (DCBA) for violation of the County's Fair Chance Ordinance for Employers, with the state's Civil Rights Department for violation of the Fair Chance Act.

What are the penalties for violating the FCO?

Employers can have monetary penalties, and in some circumstances, action against licenses:

- For a first violation, a penalty of up to \$5,000 for each aggrieved applicant or employee.
- For a second violation, a penalty of up to \$10,000 for each aggrieved applicant or employee.
- For the third and subsequent violations, a penalty of up to \$20,000 for each aggrieved applicant or employee
- The Department of Consumer and Business Affairs may recommend any license issued by the County or any departments thereof be suspended, revoked, or denied. This depends on the seriousness of the violation, whether the organization has engaged in prior or contemporary violations of the FCO or similar statutes, and/or whether any amounts due to the applicant or the County because of the violation were timely paid.

I want to make sure I'm compliant, but I'm afraid I may have missed something. Who can I reach out to?

The Los Angeles County Department of Economic Opportunity (DEO) manages the Fair Chance Hiring Campaign which provides information and awareness of the Fair Chance Ordinance for Employers. You may visit their website at bit.ly/LACountyFairChance and email them at fairchance@opportunity.lacounty.gov for information regarding your rights and responsibilities under the FCO.

For Job Seekers:

I am a job applicant, and I noticed the job application asks for criminal history. Do I have to complete this section?

No, you are not required to disclose criminal history on an application, and the employer can **NOT** disqualify your application if you do not disclose this information. In fact, the FCO prevents employers from asking about criminal history on job applications or during the application process.

What is a “Conditional Offer of Employment”?

A “conditional offer of employment” is the stage in which an employer agrees to hire you, but only after certain conditions are met. Regarding the Fair Chance Ordinance, the condition is based on whether your criminal history will have a negative impact on your performance of the job duties. Please remember: Having a criminal history does not automatically disqualify you from the position. The Fair Chance Ordinance has steps in place to prevent an employer from rejecting your employment solely because of a criminal history.

At what point can the employer ask about my criminal history?

Employers can **only** ask about your criminal history after they have offered you the conditional offer of employment. If a criminal background check is being conducted following the offer, the employer can not discuss any criminal background until they have provided you a copy of their criminal background check.

After the employer conducted a criminal background check, they rescinded the job offer. What happens now?

The employer cannot rescind the job offer just yet – there are a few steps that must take place first, which are requirements set by the FCO. The employer shall conduct an Initial Individualized Assessment and present you with a Preliminary Notice of Adverse Action (via mail and email), which is a notice that they intend to rescind conditional offer of employment. You will have five (5) business days to respond to this before the employer can make a final decision on whether to withdraw the conditional offer of employment. If you need more time to dispute the notice, then you shall be provided at least ten (10) more business days to respond to the notice. Following this, the employer will perform a Second Individualized assessment, documented in writing. If they still decide to rescind the offer of employment, they must provide you a copy of the Second Individualized assessment. You have the right to reach out to the LA County Department of Business and Consumer Affairs to file a complaint or if you require additional information.

I am a job applicant, and I believe a business may have violated the FCO, who do I reach out to for assistance?

Applicants have one year to file a complaint regarding any potential violation of this Ordinance. Please reach out to the Los Angeles County Department of Consumer and Business Affairs (DCBA) to file a complaint under the Fair Chance Ordinance for Employers. You may contact them at:

- By Email: info@dcba.lacounty.gov
- By Web: <https://dcba.lacounty.gov/contact-us/>
- By Phone: (800) 593-8222



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