

SUMMARY OF CALIFORNIA FAIR CHANCE ACT (FCA) HIRING PROCESS

1. The Job Application and Interview

It is unlawful for employers to include on an employment application, any question that seeks the disclosure of a candidate's criminal history. This also includes asking questions during an interview. The purpose of the law is to provide justice-involved job seekers a fair chance to be considered for a job opportunity, regardless of their conviction history. There are certain exceptions for employers from industries such as law enforcement, healthcare facilities, and education system where disclosure of certain offenses is required due to the sensitivity of the position.

2. The Conditional Offer

The FCA prohibits employers from inquiring about a candidate's conviction history before extending a conditional job offer. It also limits the consideration of criminal history information such as arrests without convictions, completed diversion programs, or sealed/dismissed convictions.

3. The Background Check

Once a job offer is made, candidates are allowed to begin working. It is up to the employer to perform a criminal history check. However, the employer must evaluate each candidate's conviction history individually, taking into account the nature of the offense, timing, and its relevance to the job.

4. The Individualized Assessment

An evaluation, also known as an individualized assessment, needs to be completed, however it does not have to be in writing. The Civil Rights Department (CRD) has created a sample form that is available for free to all employers.

5. The Rescission of The Offer, If Necessary

If a job offer is rescinded due to the candidate's criminal history, the employer must notify the candidate in writing that the job is being rescinded, provide a copy of the report used, and allow at least five business days for a response.

6. Reassessment

During this time, the candidate can present evidence of rehabilitation or challenge the conviction history. If disputed, the candidate has an additional five days to respond with supporting evidence like work history, context of the offense, or rehabilitation efforts. The employer must review all submitted information before reaching a final decision.

7. The Final Notification

Subsequently, the employer must inform the candidate in writing of any disqualification, the process to challenge it, and the right to file a complaint with the CRD.

FCA: FILING A COMPLAINT

Under current law, individuals must file a claim against employers through the California Civil Rights Department (CRD), a process that can take a year or more to finalize. Candidates must directly contact the CRD, complete an intake, and provide facts, records, document copies, evidence, and witness information as part of the investigation. Complaints should be submitted within three years of the incident.

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The CRD will assess the allegations and determine if they fall under the laws it enforces. An investigation could lead to a 1) settlement, 2) prosecution by CRD in court (CRD typically requires the parties to go to mediation), or 3) case closure without prosecution or settlement.

If the allegations are outside the CRD's jurisdiction the candidates will need to independently file a court case. No additional information or guidance is offered to the candidate or the business. If the candidate is dissatisfied with the outcome of the investigation, and the case has not been settled or accepted by CRD to file a lawsuit in court, that party may appeal CRD's closure of the case.

While the law covers public and private employers with five or more employees, including union hiring halls, labor contractors, temporary employment agencies, and client employers, certain positions at healthcare facilities, farm labor contractors, or roles within state criminal justice agencies are exempt. It also does not apply to positions where background checks are required by law or employment based on criminal history is restricted by law.