



# Criminal History? You Can Work With That

A Worker's Guide to Criminal History  
Protections Under the New York City  
Human Rights Law

*In NYC, you shouldn't lose out on a job just because you've been arrested or convicted of a crime. Your criminal record shouldn't be a barrier to your ability to earn a living, provide for your family, and contribute to your community. NYC has strong protections against employment discrimination based on criminal history. You're protected whether you're looking for a job or already have one. This guide tells you about your rights at each step of the employment process.*

*Most employers doing business in NYC have to follow these rules, but there are exceptions discussed at the end of this guide.*

*The NYC Commission on Human Rights has jurisdiction over criminal history discrimination by private employers. You should talk to a lawyer if you experience criminal history discrimination from a government employer.*





## PROTECTIONS DURING YOUR JOB SEARCH



### Job Postings and Applications

Employers and temp agencies can't mention anything about criminal history or background checks when they advertise jobs. Job ads that say, for example, "background check required" or "no felonies" are illegal. Job applications also can't ask about your record or ask you to authorize a background check.



### Job Interviews

Employers can't mention anything about criminal history or background checks in your interview. They can't ask if you have a record or will be able to pass a background check. Employers must consider all of your qualifications and conditionally offer you the job before they may ask about your criminal history. Employers must assess qualifications like your training, work experience, references, and whether you have a necessary license before giving you a conditional offer.



### Conditional Offer of Employment

Congratulations! If you received a conditional offer, the employer has determined that you are qualified for the job. If the employer wants, it is now allowed to ask about your criminal history and run a criminal background check. You are still protected from certain types of questions about your record and the employer can't just decide not to hire you because you have a record.



### Criminal Background Check

Employers may never ask about:

- non-convictions (for example, arrests that were not prosecuted; acquittals; dismissed charges; expunged cases; and vacated convictions)
- cases adjourned in contemplation of dismissal
- youthful offender cases
- violations (for example, disorderly conduct)
- non-criminal offenses (this does not include driving infractions)
- sealed cases

Employers must ignore information they learn about any of the above types of cases.

Employers are permitted to consider:

- open or pending cases
- misdemeanor convictions
- felony convictions
- driving infractions

If the employer has no concerns after reviewing your record, the job is yours. If it does have concerns, the employer must ask you for evidence of good conduct or rehabilitation and do a Fair Chance Analysis of your record.



### Fair Chance Analysis of Your Record

An employer may take away a job offer for one of two reasons: (1) there is a direct relationship between the alleged or convicted conduct and the job, or (2) hiring you would involve an unreasonable risk to people or property.

The employer must consider these Fair Chance Factors when determining if there's a direct relationship or unreasonable risk:

- New York encourages employment for people with criminal records.
- The specific job duties and responsibilities.
- Whether your record affects your ability to perform one or more job duties.
- The time since the alleged or convicted crime occurred (not the date of the arrest or conviction).

- Your age when the alleged or convicted crime occurred. (If you were 25 or younger, that's a mitigating factor that weighs in your favor.)
- The seriousness of your alleged or convicted conduct. (Possession or sale of a controlled substance is not considered particularly serious in this context.)
- Evidence of your accomplishments, such as rehabilitation or good conduct.
- The employer's interest in protecting people and property.
- If you have a certificate of relief from disabilities or a certificate of good conduct, the employer must presume that you are rehabilitated.

The employer has to write this analysis down. Before taking away a job offer, the employer must give you an opportunity to respond.

#### ***Evidence of good conduct or rehabilitation includes:***

- ***proof that you attended school, job training, or counseling***
- ***evidence that you're involved in your community***
- ***letters from people who know you, like teachers, counselors, supervisors, clergy, and parole or probation officers***



### Your Opportunity to Respond

If an employer is considering not hiring you because of your record, you still have rights. The employer must give you a written copy of its initial Fair Chance Analysis and a copy of the criminal background check. The employer also must hold the job open for at least 5 business days after it provides you that information so you can respond. This gives you a chance to set the record straight. If there are errors in the background check, tell the employer. If you have evidence of good conduct or rehabilitation, submit it. After the employer receives your response, it must complete the Fair Chance Analysis and give you its written decision.



## PROTECTIONS DURING YOUR EMPLOYMENT

Once you've started a job, you are still protected from discrimination based on your criminal history.

Before firing or disciplining you based on an arrest or conviction, your employer must do a Fair Chance Analysis similar to that described on pages 4-5, but it must also look at your performance on the job. You can only be disciplined if your employer properly determines from its Fair Chance Analysis (1) that there is a direct relationship between the alleged or convicted conduct and your job, or (2) that keeping you as an employee would involve an unreasonable risk to the safety or welfare of people or property. The employer may place you on leave for a reasonable period of time (usually 5 business days) while it does its analysis. The employer must provide you (i) a written copy of its initial Fair Chance Analysis; (ii) the information it relied on for the analysis; and (iii) at least 5 business days to respond.



## EXCEPTIONS UNDER THE LAW



### Police Officers, Peace Officers, and Civilian Law Enforcement

The protections discussed in this guide generally don't apply to police or peace officers. If you are applying to work in a civilian position at a law enforcement agency, though, you can't be discriminated against because of adjournments in contemplation of dismissal (ACDs) or arrests that didn't result in criminal convictions.



### Certain Finance Jobs

If a job in the financial services industry is governed by a self-regulatory organization (SRO), you may not have some of the protections discussed in this document. If you have questions about whether this applies to your situation, contact the Commission or speak to an attorney.



### Criminal Background Checks Required by Law

If an employer is legally required to run a criminal background check for the position you're applying for, it may:

- Tell you that a background check is required before making a conditional offer (but only after you have applied, not in ads).
- Conduct the criminal background check any time during the hiring process.

But the employer must:

- Not mention background checks in job postings or ads.
- Do a Fair Chance Analysis if the employer has concerns about your criminal history.
- Give you its Fair Chance Analysis and criminal background information, then let you have at least 5 days to respond.



### Laws that Exclude Particular Convictions

If a law prohibits an employer from hiring applicants with specific disqualifying convictions, the employer may:

- Tell you which convictions are disqualifying any time after you've applied.
- Do a criminal background check (or ask you if you have any of the disqualifying convictions) any time after you've applied.



- Reject you if you have a disqualifying conviction.

But the employer must:

- Not mention background checks in job ads.
- Not ask about other convictions until after a conditional offer.
- Do a Fair Chance Analysis of convictions that it has concerns about that aren't covered by a mandatory legal exclusion, then give you its written analysis and at least 5 days to respond.



### Certain City Government Jobs

If you are applying for a job with a NYC government employer, the employer must identify a direct relationship between the job and your record, or an unreasonable risk to people or property, before deciding not to hire you based on your criminal record. But for some city government jobs listed by the Department of Administrative Services, the employer is not required to give you a copy of your criminal record and time to respond.

If you already have a job with a city government employer and have protections against unfair discipline or termination under other laws or rules, your employer may not be required to follow some of the rules discussed in this guide.



## SOME HELPFUL TIPS

- Know your criminal record before you look for a job. Free legal service providers can help you understand your record and fix any mistakes. They can also help you learn to talk about your record with employers. A list of providers is available at [NYC.gov/FairChanceNYC](http://NYC.gov/FairChanceNYC).
- Unless an exception applies, you do not have to share anything about your criminal history or give permission for a criminal background check until after you receive a conditional offer of employment.
- Unless an exception applies you do not have to disclose the types of cases listed in the grey box on page 3. If an employer asks, you can respond as if the case never happened. However, an employer can disqualify you if you lie about other aspects of your criminal history.
- Always respond to the Fair Chance Analysis. Employers have to consider all the information you give them and communicating with the employer may convince them to hire you.
- You are entitled to a Fair Chance Analysis every time you apply for a job and receive a conditional offer if the employer has concerns about your record. Since every job has different duties and responsibilities, even if your criminal record is an impediment to one job, it may not disqualify you from another position. Even if you reapply for the same job, your Fair Chance Analysis may change, for example because more time has passed since the offense occurred or because you are able to provide new proof of rehabilitation or good conduct.
- These protections apply even if your arrest or conviction happened in another state.



## **Additional Information**

If you experience discrimination based on your criminal history, the NYC Commission on Human Rights is here to help!

More information is available on [NYC.gov/FairChanceNYC](https://nyc.gov/FairChanceNYC)

To file a complaint or learn more about the Commission, dial (212) 416-0197 or call 311 and say "human rights."

### **Main Office**

22 Reade Street  
New York, NY 10007

### **NY Relay Services**

Dial 711 or  
(800) 421-1220 (English)  
(800) 662-4886 (Spanish)

### **Website**

[NYC.gov/HumanRights](https://nyc.gov/HumanRights)





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