

# 4 Best Practices When Considering a Candidate with Criminal Records

## Background Screening is an Essential Part of Making a Quality Hiring Decision

Just because your candidate has a conviction doesn't mean they should be automatically disqualified from the job. Why shouldn't they be disqualified? The EEOC Best Practices Guidance shares information when considering individuals with criminal records. Having a documented process and policy in place to make decisions about criminal record disqualifications will help you remain consistent, fair and compliant in your evaluation of prospective employees.



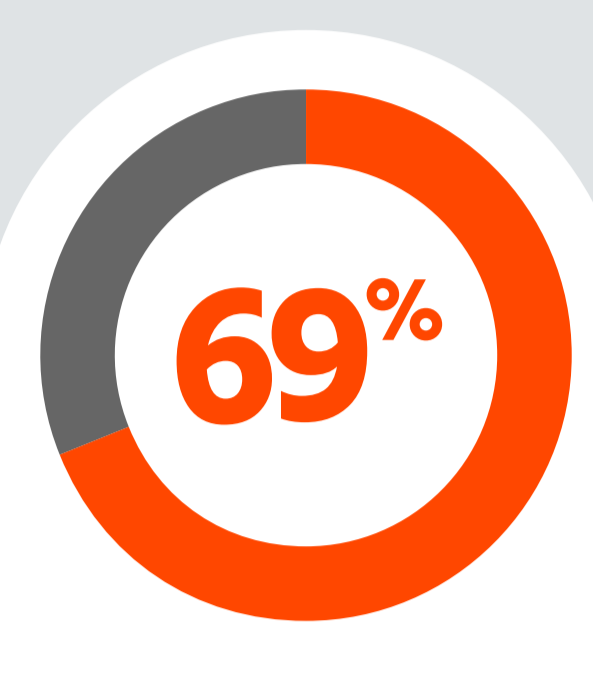
**Conviction**  
Don't automatically disqualify Candidate

**Documented Process**  
EEOC Best Practices Guidance

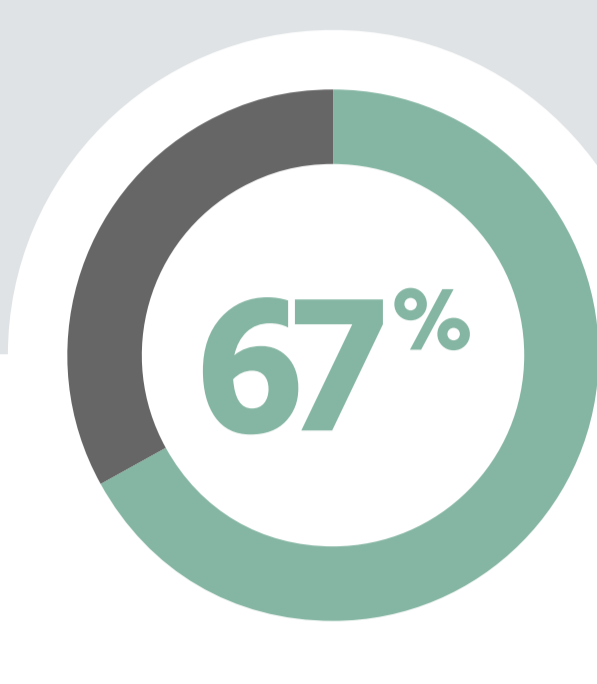
**Evaluation**  
FAIR AND COMPLIANT

## How Do Employers Conduct the Background Screening and Adverse Action Processes?

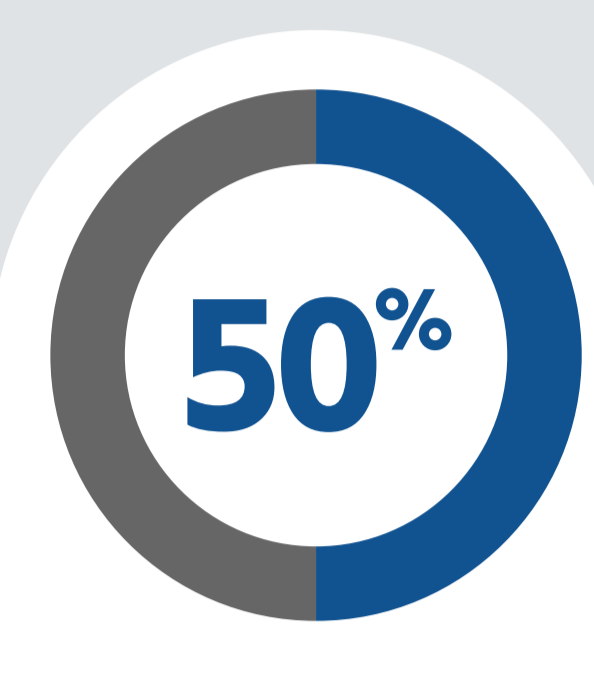
**93%** of organizations that conduct background checks use a **Criminal Record Search** to evaluate prospective employees.



69% of employers explain their background screening program and what information they are looking for



67% of employers would proceed with the candidate evaluation path even if the candidate didn't divulge a past conviction



50% of companies send out both pre-adverse and adverse action notices when they decide not to hire a candidate based on what was found in an employment background check report

\*Background Screening Trends & Best Practices Report 2017-2018

## Best Practices When Considering Candidates with Criminal Records

**TIP # 1**

### BACKGROUND CHECKS AND BAN-THE-BOX

Some employers may not be aware of the constantly changing **Ban-the-Box**, local and federal regulations. Before asking a candidate if they have been convicted of a crime, make sure you're aware of your city, county and state **Ban-the-Box** laws. Generally, these laws determine if companies are allowed to ask questions related to a candidate's criminal history on the initial application.



**TIP # 2**

### FAIR CHANCE

You must evaluate many factors before making a hiring determination, such as the type of crime, the severity, how long ago it occurred, how old the individual was at the time the crime was committed and how that conviction relates to the job. Make sure to have a process in place to be **fair to all candidates** and as always, make sure you're following all laws to avoid discrimination. Some states and cities have even more stringent processes and require more information from the employer when a hiring decision is made based on the findings of a background screening report. For example, when hiring in **New York City and Los Angeles**, employers must complete a written assessment that explains the link between the candidate's criminal history and the risks inherent to the position applied for.

## Fair Chance Overview (For LA and NYC)

Before making a decision based on a criminal history report the employer must:

- STEP 1** Conduct an assessment that explains the link between the candidate's criminal history and the risks inherent in the position applied for.
- STEP 2** Provide a copy of the completed assessment to the candidate.
- STEP 3** Allow the candidate a reasonable time to respond and must hold the position open during this time period.
- STEP 4** Consider any additional information provided by the candidate.

**TIP # 3**

### PRE-ADVERSE ACTION AND ADVERSE ACTION

Companies must follow a **Fair Credit Reporting Act (FCRA)** mandated two-step process before they take any adverse action based on the findings in a consumer report. The two steps consist of a **pre-adverse notice**, sent prior to making a final decision, followed by a notification of **adverse action**, sent after a final decision is made to hire. Neglecting this process will expose you to lengthy and costly legal action. Always give the candidate adequate time to respond or dispute and wait a reasonable amount of time (at least five days) between notices, or longer if needed.

## Adverse Action



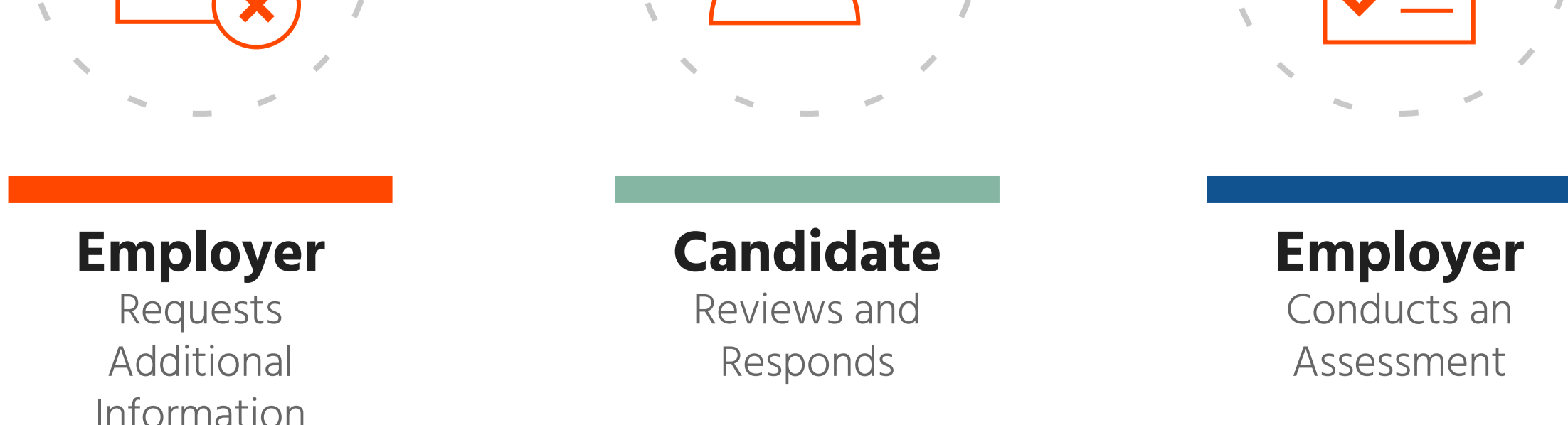
A letter is sent with another copy of the federal summary of rights as well as the state-specific summary of rights

**TIP # 4**

### INDIVIDUALIZED ASSESSMENT

To comply with the **2012 Equal Employment Opportunity Commission (EEOC) Enforcement Guidance**, employers are encouraged to develop an **individualized assessment** process which evaluates the important factors surrounding a conviction including the type/severity of a crime, how long ago it occurred, whether the person is a repeat offender, etc. The process helps employers determine whether the criminal conduct or incident is both job-related and consistent with business necessity and it allows the candidate an opportunity to provide additional information about the incident and identify mitigating factors.

## Individualized Assessment Workflow



**Employer**  
Requests Additional Information

**Candidate**  
Reviews and Responds

**Employer**  
Conducts an Assessment

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