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Best Practices When Considering a Candidate with a Criminal Record

Just because your candidate has a conviction doesn't mean they should be automatically disqualified from the job. **Learn more about the regulations in place to hire fairly and compliantly.**

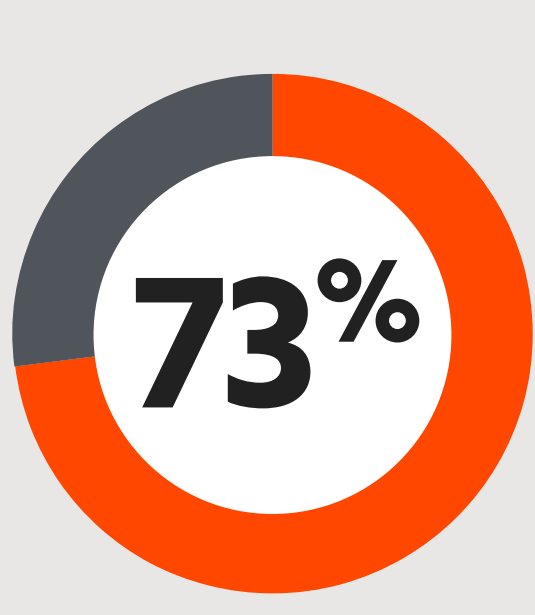
Background Screening Is an Essential Part of Making a Quality Hiring Decision

Having a documented background screening 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.

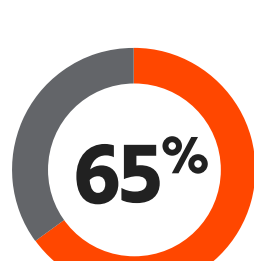
A Documented Background Check Process Should Include:

- 
Conviction or Arrest
 Don't automatically disqualify candidate
- 
Consistent and Fair Process
 EEOC Enforcement Guidance
- 
Evaluation
 Individualized Assessment

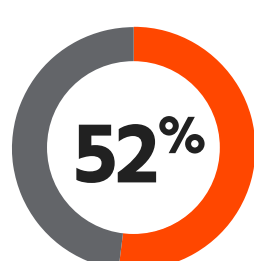
How Do HR Professionals Feel About the Background Screening and Adverse Action Process?¹



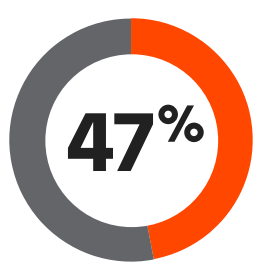
anticipate it will become increasingly **challenging to keep up with changes in hiring regulations and practices** over the next two years



send a pre-adverse or adverse action notice, and/or allow the candidate to respond if a background screen returns a "hit"



expect their organizations will add more services in the next two years to facilitate more thorough background screening



report that their adverse action and/or individualized assessments are **managed with automation/technology**

1 Background Checks and Ban-the-Box

Make sure you're aware of your city, county, and state ban-the-box laws before asking a candidate if they have been convicted of a crime.



Generally, ban-the-box laws determine if companies are allowed to ask questions related to a candidate's criminal history on the initial application, but may also establish additional notice requirements similar to federal adverse action requirements.



Some employers may not be aware if their particular jurisdiction has **ban-the-box** laws, and in fact many jurisdictions do.

2 Fair Chance Laws

Ensure you have a process in place to be fair to all candidates while following local laws to avoid discrimination.



Fair chance laws require that employers evaluate the following relevant factors **before** making a hiring determination:

- 
Type/Severity of Crime
- 
How Long Ago the Crime Occurred
- 
Age of Individual When Crime Was Committed
- 
How That Conviction Relates To The Job





PLEASE NOTE:

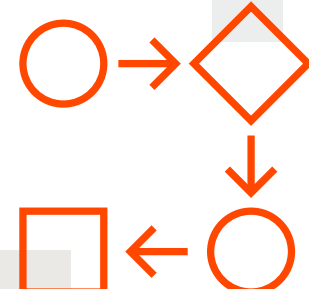
As an extension of ban-the-box laws, fair chance laws occur at both the state and local levels.

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.

FAIR CHANCE OVERVIEW (FOR LA AND NYC)

Before making a hiring decision based on the results of a criminal history report, employers must first perform the following actions:

-  Conduct an assessment that explains the link between the candidate's criminal history and the risks inherent in the position applied for.
-  Provide a copy of the completed assessment to the candidate.
-  Allow the candidate a reasonable time to respond.
-  Consider any additional information provided by the candidate.



3 Pre-Adverse Action and Final Adverse Action

Companies must follow the Fair Credit Reporting Act (FCRA) before they may take any final adverse action based on the findings in a consumer report.



The Fair Credit Reporting Act (FCRA) is a federal law that mandates a two-step process. Neglecting this process may expose you to lengthy and costly legal action.



The two steps consist of a **pre adverse action notice**, sent prior to making final decision, followed by a **notification of adverse action**.

In the adverse action step, a notice is sent with another copy of the federal summary of rights as well as the state-specific summary of rights. This notification is sent after a final decision is made not to hire.



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.



4 Develop an Individualized Assessment Process

To comply with EEOC Guidance, employers are encouraged to develop an individualized assessment process which evaluates the applicable factors surrounding a conviction.



An Equal Employment Opportunity Commission (EEOC) process evaluates relevant factors such as the type/severity of the crime, how long ago it occurred, and whether the person is a repeat offender.

What this means:

-  Employers can determine whether the criminal conduct or incident is both job-related and consistent with business necessity.
-  Candidates have an opportunity to provide additional information and identify mitigating factors.

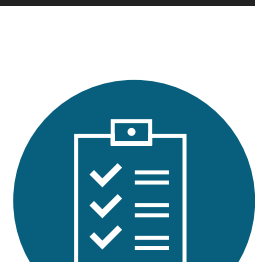
INDIVIDUALIZED ASSESSMENT WORKFLOW



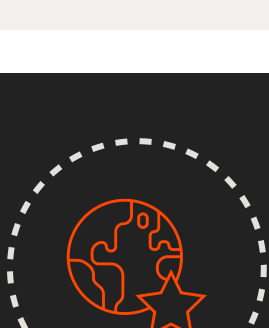
Employer
Requests Additional Information



Candidate
Reviews and Responds



Employer
Conducts an Assessment



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Sources

¹2022 Hiring Reimagined Research Report