Fair Chance Ordinance

San Francisco Office of Labor Standards Enforcement
Webinar Housekeeping

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• Use the “Questions” box to ask your questions during the presentation.
San Francisco Fair Chance Ordinance

• Signed by Mayor Lee on **February 14, 2014**
• Operative on **August 13, 2014**
• Amendment in April 2018, effective October 1, 2018
• Regulates use of arrest and conviction records in employment and in affordable housing decisions

• OLSE enforces employment sections
• The San Francisco Human Rights Commission (HRC) enforces housing components
“Ban the Box” Laws

- 70 million (nearly 1 in 3) adults in the U.S. have arrests or convictions on their record
- Employment is the #1 factor affecting return to criminal justice system
- 29 states and 150 cities and counties now have Ban the Box laws

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Who is Covered?

• **Police Code Article 49: Employers Citywide**
  • 5+ *employees worldwide* & any employees (or planned positions) in SF
  • Any position where the employee works/will work at least 8 hours/week in SF

• **Admin Code 12T: City Contractors**
  • Any size & any employees (or planned positions) in SF
  • Any position where the employee works/will work at least 8 hours/week in SF
Job Announcements

• **cannot** say that someone with arrests or convictions will not be considered, or that a background check must be “passed.”

• **must** include an affirmative statement of compliance with the FCO:

  “Pursuant to the San Francisco Fair Chance Ordinance, we will consider for employment qualified applicants with arrest and conviction records.”
Applications

• Job applications **cannot** ask about the applicant’s history of arrests or convictions.

• Employers **cannot** ask about, or inquire into, convictions or unresolved arrests until after a conditional offer of employment.
Background Check Prohibited Information

Six categories of information may not be considered at any time:

1. an arrest not leading to a conviction (except unresolved arrests)
2. participation in a diversion or deferral of judgment program
3. a conviction that has been dismissed or expunged
4. a conviction in the juvenile justice system
5. **a conviction that is more than 7 years old**
6. an offense other than a felony or misdemeanor (i.e. traffic ticket)
7. Any decriminalized offense (such as some cannabis convictions)

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Background Check Procedures

When considering an applicant’s conviction history, the Employer must:

• provide the applicant with a copy of the **FCO Notice & background check**
• give the applicant **seven days to respond** – correct or provide evidence of rehabilitation or mitigating factors
• consider only **Directly-Related Convictions**
• treat each applicant as an individual – **no automatic rejections**
Exceptions to Prohibited Information

Employers can consider convictions and arrests prior to 7-year lookback period for jobs supervising:

• Minors
• Dependent adults
• Persons 65 years or older

Employers can consider infractions (driving record) where driving is a significant part of the job.
State and Federal Preemptions

• Federal or State laws that require background checks for certain jobs preempt the FCO.
  • Example: financial services/insurance employees
What the FCO Doesn’t Do:

• FCO does **NOT** require employers to give preference to, or hire an unqualified individual with an arrest or conviction record.

• FCO does **NOT** limit employers’ ability to choose the most qualified and appropriate candidate among the applicants.

• FCO does **NOT** require employers to conduct a background check.

• FCO does **NOT** prohibit employers from conducting a background check.
Common Compliance Issues
Common Violations

• Asking about convictions on job applications

• Conducting a background check before a conditional offer of employment

• Implying that no individuals with convictions will be hired on job announcements

• Not including a statement of FCO compliance on job announcements

• Improper process for notifying applicants of records found/considered
  • Failing to provide a copy of the background check
  • Failing to provide 7 days for applicant to review and respond
Resources

**SF Fair Chance Ordinance**

- Employment Questions – Office of Labor Standards Enforcement
  - Web page: [http://sfgov.org/olse/fco](http://sfgov.org/olse/fco)
  - Phone hotline: (415) 554-5192
  - Email address: fce@sfgov.org

- Affordable Housing Questions – Human Rights Commission

**California Fair Chance Act**

- [Text of AB-1008](http://sfgov.org/olse/fco) (link)