

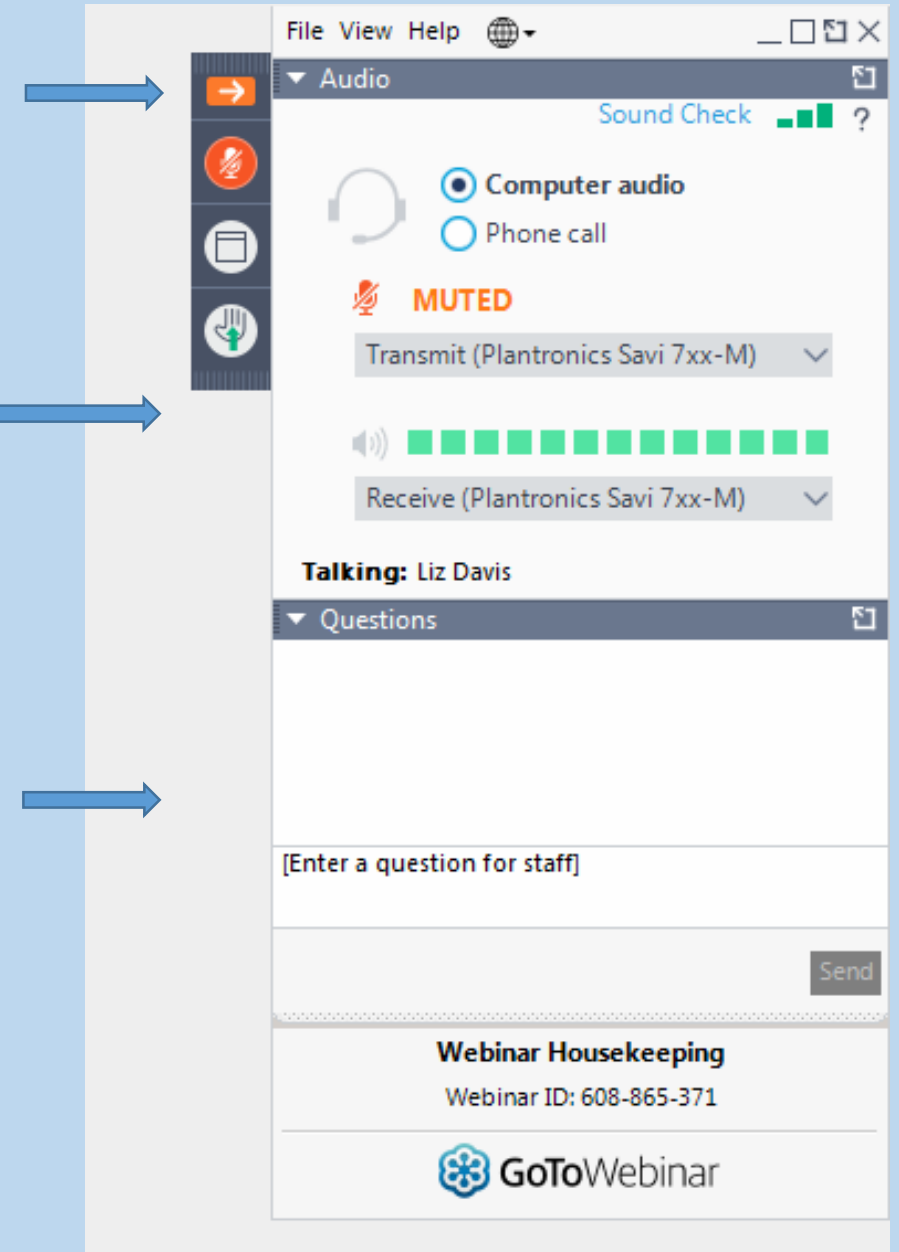


Fair Chance Ordinance

San Francisco Office of Labor Standards Enforcement

Webinar Housekeeping

- You should see a control panel like this on the right side of your screen
- The panel should minimize automatically when you aren't using it. To minimize or re-open, click the orange arrow.
- 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



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:

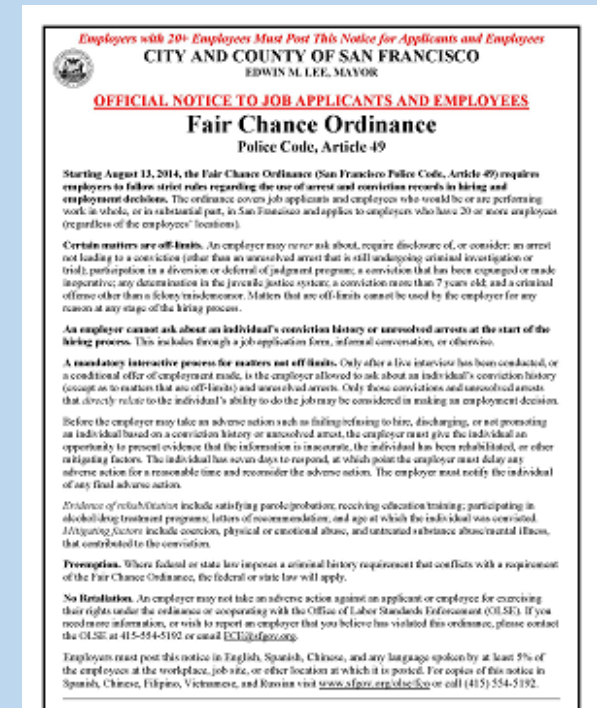
1. an arrest not leading to a conviction (except unresolved arrests)
2. participation in a diversion or deferral of judgment program
3. a conviction that has been dismissed or expunged
4. a conviction in the juvenile justice system
5. **a conviction that is more than 7 years old**
6. an offense other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



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>
 - Phone hotline: (415) 554-5192
 - Email address: fce@sfgov.org
- Affordable Housing Questions – Human Rights Commission
 - Web page: <http://sf-hrc.org/fair-chance-ordinance>

California Fair Chance Act

- [Text of AB-1008](#) (link)

