

The Criminal Background Check Assessment & Adverse Action Notification Process

WHITE PAPER

JULY 2024



DISCLAIMER: Please note that the information contained in this content is being provided for informational purposes only and should not be construed as legal advice. Please consult your legal counsel to ensure compliance with all federal, state, and local laws.



The Criminal Background Check Assessment & Adverse Action Notification Process

A background screening company has just provided you, the employer, with a background check report on an applicant that reveals a criminal conviction. Now what? Somewhat predictably, you will need to carefully assess the criminal history information included in the background check report to decide whether to hire the applicant. What is more, you will need to ensure the applicant is properly informed of any potential negative employment decisions and, if appropriate, any final negative employment decisions that are based on the background check report. That seems fairly straightforward. However, the exact manner in which the above is accomplished is of great importance. Failure to aptly consider criminal history in employment decisions and notify an applicant of where they stand during the entire assessment process could result in unwanted litigation as a result of noncompliance.

How does an employer begin to properly assess criminal history information?

There is no federal law that explicitly defines how an employer must assess criminal history information to determine whether to exclude an individual from a job position. Nevertheless, the Equal Employment Opportunity Commission (EEOC) issued [guidance](#), entitled “Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act” in 2012. Although the guidance is not law or regulation, courts regularly look to EEOC guidance when making their decisions.

The guidance makes it clear that an employer’s use of criminal history information can result in Title VII discrimination if certain measures are not put into place. According to the guidance, the employer must show that an exclusion based on criminal history information is job-related for the position and consistent with business necessity. To do so, the employer must effectively link specific criminal conduct, and its dangers, with the risks inherent in the duties of a particular position. This is accomplished through the implementation of a targeted screen considering at least (1) the nature and gravity of the offense, (2) the time that has passed since the offense and/or completion of the sentence, and (3) the nature of the job held or sought, followed by an opportunity for an individualized assessment for people excluded by the screen to determine whether the policy as applied is job-related and consistent with business necessity.

The individualized assessment consists of a notice to the individual that they have been screened out

because of a criminal conviction and an opportunity for the individual to demonstrate that the exclusion should not be applied due to their particular circumstances. The individual’s showing may include information that they were not correctly identified in the criminal record, or that the record is otherwise inaccurate. Other relevant individualized evidence includes, for example:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Older age at the time of conviction, or release from prison;
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense or conduct;
- Rehabilitation efforts, e.g., education/training;
- Employment or character references and any other information regarding fitness for the particular position; and
- Whether the individual is bonded under a federal, state, or local bonding program.

Afterward, the employer must consider whether the additional information provided by the individual warrants an exception to the exclusion and shows that the policy as applied is not job-related and consistent with business necessity.

What is an employer's adverse action notification requirements under federal law?

The federal Fair Credit Reporting Act (FCRA) mandates certain obligations in the event an employer considers an adverse action based on the background check report. For clarity, an adverse action means the denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

When an employer intends to rely on a background check report, in any capacity, to make an adverse employment decision, the employer must first provide the applicant with a "pre-adverse action notice," which must include a copy of the background check report and the document, "[A Summary of Your Rights Under the Fair Credit Reporting Act.](#)"

The purpose of a pre-adverse action notice is to allow the applicant to review the background check report and contact the background screening company should they believe any item of information is inaccurate or incomplete. Consequently, the employer must wait a reasonable amount of time after providing the applicant with the pre-adverse action notice before making an adverse employment decision. This is commonly referred to as the "waiting period." The FCRA does not explicitly state how long an employer must give an applicant to review the background check report before ultimately making an adverse employment decision, but the Federal Trade Commission's [Advisory Opinion to Weisberg](#) opined that five business days is a reasonable amount of time.

Assuming the applicant does not inform the background screening company that any item of information is inaccurate or incomplete and the employer ultimately makes an employment decision that adversely affects the applicant, the employer must send the applicant a "final adverse action notice." The final adverse action notice must inform the applicant of the following:

- Notice of the adverse action based on the background screening report;
- Name, address, and telephone number of the background screening company, such as InCheck;
- A statement that the background screening company did not make the decision to take the adverse action and is unable to provide the candidate the specific reasons why the adverse action was taken;

- Notice of the candidate's right to obtain a free file disclosure of a background screening report within 60 days; and
- Notice of the candidate's right to dispute with the background screening company the accuracy or completeness of any information in a background screening report.

Are there any other assessment and notification requirements for which employers need to be aware?

Yes! Many state and local jurisdictions have passed legislation that also impacts how private employers need to assess legally usable criminal background check information and/or properly notify applicants during specific stages of the assessment process. The jurisdictions below explicitly require private employers to follow specific conditions when considering criminal background check information, similar to the EEOC's Guidance, and/or impose requirements in addition to that of the FCRA as it relates to the adverse action process based on criminal history information.



Jurisdiction Information on Individualized Assessments, Pre- Adverse Action Notices, Waiting Periods, Reassessment, and Final Adverse Action Notices

Please note the below is not intended to be all-inclusive. Indeed, the list only includes excerpts from each jurisdiction and does not address every nuisance included within the legislation, such as complete restrictions on certain types of criminal history information. The review is only meant to emphasize the compliance obligations employers face during the assessment of criminal history information. InCheck strongly recommends that employers work closely with their legal counsel to further examine all applicable laws to ensure their background screening program is compliant.

Jurisdictions include:

- [California](#)
- [California \(Los Angeles\)](#)
- [California \(Los Angeles County\)](#)
- [California \(San Francisco\)](#)
- [Florida \(Gainesville\)](#)
- [Georgia](#)
- [Georgia \(Atlanta\)](#)
- [Hawaii](#)
- [Illinois](#)
- [Illinois \(Chicago\)](#)
- [Louisiana](#)
- [Maryland \(Montgomery County\)](#)
- [Maryland \(Prince Georges County\)](#)
- [Massachusetts](#)
- [Michigan \(Grand Rapids\)](#)
- [Missouri \(Columbia\)](#)
- [Missouri \(Kansas City\)](#)
- [Missouri \(Saint Louis\)](#)
- [New Jersey](#)
- [New York](#)
- [New York \(New York City\)](#)
- [Pennsylvania](#)
- [Pennsylvania \(Philadelphia\)](#)
- [Oregon \(Portland\)](#)
- [Texas \(Austin\)](#)
- [Washington](#)
- [Washington \(Seattle\)](#)
- [Washington D.C.](#)
- [Wisconsin](#)

California (Cal. Govt. Code § 12952; 2 CCR § 11017.1)

Individualized Assessment

If an employer intends to deny an applicant the employment position they were conditionally offered based solely or in part on the applicant's conviction history, the employer must first conduct an individualized assessment – a reasoned, evidence-based determination of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. The individualized assessment must include, at a minimum, consideration of the following factors:

- The nature and gravity of the offense or conduct. Consideration of this factor may include but is not limited to:
 - the specific personal conduct of the applicant that resulted in the conviction;
 - whether the harm was to property or people;
 - the degree of the harm (e.g., amount of loss in theft);
 - the permanence of the harm;
 - the context in which the offense occurred;
 - whether a disability, including but not limited to a past drug addiction or mental impairment, contributed to the offense or conduct, and if so, whether the likelihood of harm arising from similar conduct could be sufficiently mitigated or eliminated by a reasonable accommodation, or whether the disability has been mitigated or eliminated by treatment or otherwise;
 - whether trauma, domestic or dating violence, sexual assault, stalking, human trafficking, duress, or other similar factors contributed to the offense or conduct; and/or
 - the age of the applicant when the conduct occurred.
- The time that has passed since the offense or conduct and completion of the sentence. Consideration of this factor may include but is not limited to:
 - the amount of time that has passed since the conduct underlying the conviction, which may significantly predate the conviction itself; and/or
 - when the conviction led to incarceration, the amount of time that has passed since the applicant's release from incarceration.
- The nature of the job held or sought. Consideration of this factor may include but is not limited to:
 - the specific duties of the job;
 - whether the context in which the conviction occurred is likely to arise in the workplace; and/or
 - whether the type or degree of harm that resulted from the conviction is likely to occur in the workplace.

Pre-Adverse Action Notice

If, after conducting an initial individualized assessment, the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from the employment conditionally offered, the employer shall notify the applicant of the preliminary decision in writing. The written notice to the applicant may, but is not required to, justify or explain the employer's reasoning for making the decision. However, the notice to the applicant must include all of the following:

- Notice of the disqualifying conviction(s) that are the basis for the preliminary decision to rescind the offer;
- A copy of the conviction history report utilized or relied on by the employer, if any;
- Notice of the applicant's right to respond to the notice before the preliminary decision rescinding the offer of employment becomes final;
- An explanation informing the applicant that, if the applicant chooses to respond, the response may include submission of either or both of the following types of evidence: evidence challenging the accuracy of the conviction history report that is the basis for the preliminary decision to rescind the offer, or evidence of rehabilitation or mitigating circumstances;
- Notice of the deadline for the applicant to respond, if the applicant chooses to do so.

Waiting Period

The deadline for providing a response must be at least five business days from the date of receipt of the notice. An employer may offer an applicant more than five business days to respond to the notice regarding its preliminary decision.

If notice is transmitted through a format that does not provide a confirmation of receipt, such as a written notice mailed by an employer without tracking delivery enabled, the notice shall be deemed received five calendar days after the mailing is deposited for delivery for California addresses, ten calendar days after the mailing for addresses outside of California, and twenty calendar days after mailing for addresses outside of the United States. If notice is transmitted through email, the notice shall be deemed received two business days after it is sent.

If the applicant timely notifies the employer in writing that the applicant disputes the accuracy of the conviction history being relied upon and that the applicant is taking specific steps to obtain evidence supporting the applicant's assertion, then the applicant shall be permitted no fewer than five additional business days to respond to the notice before the employer's decision to rescind the employment offer becomes final.

Reassessment

The employer shall consider any information submitted by the applicant before making a final decision regarding whether or not to rescind the conditional offer of employment. When considering evidence of rehabilitation or mitigating circumstances provided by the applicant, or by another party at the applicant's request, the employer may consider, but is not limited to, the following factors, in addition to the individualized assessment factors, as applicable:

- When the conviction led to incarceration, the applicant's conduct during incarceration, including participation in work and educational or rehabilitative programming and other prosocial conduct;
- The applicant's employment history since the conviction or completion of sentence;
- The applicant's community service and engagement since the conviction or completion of sentence, including but not limited to volunteer work for a community organization, engagement with a religious group or organization, participation in a support or recovery group, and other types of civic participation; and/or
- The applicant's other rehabilitative efforts since the completion of sentence or conviction or mitigating factors not captured in the above subfactors.

Final Adverse Action Notice

If the employer makes a final decision to rescind the conditional offer and deny an application based solely or in part on the applicant's conviction history, the employer shall notify the applicant in writing. Any notice to the applicant must include the following:

- The final denial or disqualification decision reached. The employer may also include, but is not required to include, the justification or an explanation of the employer's reasoning for reaching the decision that it did;
- Any procedure the employer has for the applicant to challenge the decision or request reconsideration; and
- The right to contest the decision by filing a complaint with the California Civil Rights Department.

California (Los Angeles) (Los Angeles Municipal Code 189.03)

Individualized Assessment

An employer shall not take adverse action against an applicant to whom a conditional offer of employment has been made based on an applicant's criminal history unless the employer performs a written assessment that effectively links the specific aspects of the applicant's criminal history with risks inherent in the duties of the employment position sought by the applicant. In performing the assessment, the employer shall, at a minimum, consider the factors identified by the United States Equal Employment Opportunity Commission and other factors as may be required by rules and guidelines promulgated by the Department of Public Works, Bureau of Contract Administration.

Pre-Adverse Action Notice

An employer, prior to taking an adverse action against an applicant, shall provide that person a Fair Chance Process (an opportunity to provide information or documentation to an employer regarding the accuracy of their criminal history or that should be considered in the employer's assessment, such as evidence of rehabilitation or other mitigating factors), including:

- The provision of written notification of the proposed adverse action;
- A copy of the written assessment performed; and
- Any other information or documentation supporting the employer's proposed adverse action.

Waiting Period

The employer shall not take an adverse action or fill the employment position sought by the applicant for a period of at least 5 business days after the applicant is informed of the proposed adverse action in order to allow the applicant to complete the Fair Chance Process.

Reassessment

If the applicant provides the employer with any information or documentation pursuant to the Fair Chance Process, then the employer shall consider the information or documentation and perform a written reassessment of the proposed adverse action.

Final Adverse Action Notice

If the employer, after performing the reassessment of the proposed adverse action, takes the adverse action against the applicant, then the employer shall notify the applicant of the decision and provide that applicant with a copy of the written reassessment.

California (Los Angeles County) (Ordinance No. 2024-0012)

Individualized Assessment

If an employer intends to deny an applicant or employee a position of employment, rescind a conditional offer of employment made to an applicant, or take any other adverse action against an employee, solely or in part because of the applicant's or employee's criminal history, the employer must first conduct an initial individualized assessment that is documented in writing, of whether the applicant's or employee's criminal history has a direct, adverse and negative bearing on the applicant's or employee's ability to perform the duties or responsibilities necessarily related to the applied-for position, such that it justifies denying the applicant or employee the employment position or justifies taking adverse action against an employee.

The initial individualized assessment must include at a minimum, consideration of the following factors:

- The nature and gravity of the offense or conduct, including but not limited to, consideration of whether the harm was to property or people, the degree or severity of the harm or offense, the age of the applicant or employee when the conduct occurred, and the permanence of the harm or offense;

- The time that has passed since the offense or conduct and/or completion of the sentence;
- The nature of the employment position sought or held, including consideration of the specific duties of the job, whether the employment position offers the opportunity for the same or a similar offense to occur, and whether circumstances leading to the conduct for which the person was convicted or that is the subject of an unresolved arrest will recur in the employment position; and
- If the applicant or employee voluntarily provides to the employer any evidence of rehabilitation or mitigating circumstances before or during the initial individualized assessment, that evidence must also be considered as part of the initial individualized assessment.

Pre-Adverse Action Notice

If after performing the initial individualized assessment, the employer intends to withdraw or rescind a conditional offer of employment and/or take any other adverse action, the employer shall provide the applicant or employee with a preliminary notice of adverse action.

The preliminary notice of adverse action must be sent to the applicant or employee via both regular mail and email, if an email address is available, containing the following information:

- Notice that the employer intends to withdraw or rescind the conditional offer of employment and/or take any other adverse action due to the applicant's or employee's criminal history;
- An explanation of the applicant's or employee's right to respond to the preliminary notice of adverse action before that decision becomes final, including information regarding:
 - the waiting periods and timelines to respond, which must be displayed in bold font, underlined, or in all capital letters (All-Caps); and
 - the response may include evidence challenging the accuracy of the criminal background check report or other criminal history information, and/or voluntary submission of evidence of rehabilitation or mitigating circumstances;
- A copy of the initial individualized assessment;
- Notice of the disqualifying conviction(s) that are the basis for the intended adverse action; and
- A copy of the criminal background check report(s) obtained by the employer, if any, and any other information or documentation relating to the applicant's or employee's criminal history obtained by the employer, including but not limited to, information or documentation obtained from internet searches, court records, news articles, and/or social media content.

Waiting Period

The applicant or employee shall have at least five (5) business days to respond to the preliminary notice of adverse action before the employer can make a final decision on whether to withdraw the conditional offer of employment and/or take an adverse action. If, however, within five (5) business days, the applicant or employee notifies the employer in writing that they: 1) dispute the accuracy of the criminal background check report or criminal history information that was the basis for the preliminary notice of adverse action and that the applicant or employee is taking specific steps to obtain evidence supporting that assertion; and/or 2) the applicant or employee needs additional time to obtain written evidence of rehabilitation or mitigating Circumstances, then the individual shall be provided at least ten (10) additional business days to respond to the preliminary notice of adverse action.

The employer cannot take any adverse action or fill the employment position sought by the applicant or employee until five (5) business days have passed from the time the individual received the preliminary notice of adverse action and the employer has not received any response from the applicant or employee, or if the applicant or employee timely responds to the preliminary notice of adverse action, until such time that the employer issues the final notice of adverse action to the applicant or employee.

For all notices required to be mailed by an employer, the following timelines shall apply:

- If notice is transmitted through a format that does not provide a confirmation of receipt, such as a

written notice mailed by an employer without tracking delivery enabled, the notice shall be deemed received five (5) calendar days after the notice is deposited for delivery to a California address, ten (10) calendar days after the notice is deposited for delivery to an address outside of California, and twenty (20) calendar days after the notice is deposited for delivery to an address outside of the United States;

- If notice is transmitted through email, the notice is deemed received two (2) business days after it is sent; however, applicant and employee timelines to respond to the notice will be calculated based on the date the notice was mailed by the employer; and
- Any applicant or employee response required or permitted will follow the same mail and email timelines as noted above; however, an applicant or employee has the option to send a response to an employer either by mail or email.

Reassessment

The employer shall consider all information and documents, whether written or oral, timely submitted by the applicant or employee before making a final decision or taking an adverse action. The employer will perform a second individualized assessment, which shall be documented in writing, concerning whether the individual's criminal history has a direct, adverse and negative bearing on that person's ability to perform the duties or responsibilities necessarily related to the applied-for job position, such that it justifies denying the applicant or employee the employment position or justifies taking an adverse action against an employee, by consideration of the following factors:

- The nature and gravity of the offense or conduct, including but not limited to, consideration of whether the harm was to property or people, the degree or severity of the harm or offense, the age of the applicant or employee when the conduct occurred, and the permanence of the harm or offense;
- The time that has passed since the offense or conduct and/or completion of the sentence;
- The nature of the employment position sought or held, including consideration of the specific duties of the job, whether the employment position offers the opportunity for the same or a similar offense to occur, and whether circumstances leading to the conduct for which the person was convicted or that is the subject of an unresolved arrest will recur in the employment position;
- Any and all evidence of rehabilitation or mitigating circumstances, whether provided in written form or orally;
- Any documents disputing the accuracy of the criminal background check report or criminal history information, and/or documents or information providing an explanation regarding criminal history information.

Final Adverse Action Notice

If after performing the second individualized assessment, the employer makes a final decision to withdraw the conditional offer of employment or take any other adverse action, the employer shall notify the applicant or employee in writing both via regular mail and electronic mail, if email address is available, of all the following:

- Notice that the employer has made a final decision to withdraw the conditional offer of employment or take adverse action against the applicant or employee;
- A copy of the second individualized assessment;
- Notice of the disqualifying conviction(s) that are the basis for the final adverse action;
- Information regarding any existing procedure the employer has for the applicant or employee to challenge the decision or request reconsideration;
- Notice of the applicant's or employee's right to file a complaint with the Los Angeles County Department of Consumer & Business Affairs ("DCBA") for violation of the County's Fair Chance Ordinance for Employers, and with the state's Civil Rights Department for violation of the Fair Chance Act;
- If the employer is providing the final notice of adverse action more than thirty (30) calendar days after the applicant or employee provided a timely response to the employer's preliminary notice of adverse action, it will be presumed the employer's delay in responding to the applicant or employee was untimely, and a violation. In order to rebut this presumption, the employer must provide a written explanation in the final notice of adverse action justifying why the final decision was not made within thirty (30) days, which may include, but is not limited to, circumstances involving a business or personal emergency, or a description of circumstances or delays outside of the employer's control.

California (San Francisco) (San Francisco Police Code 4904)

Individualized Assessment

In making an employment decision based on an applicant's or employee's conviction history, an employer shall conduct an individualized assessment, considering only:

- Conduct for which a person was convicted or that is the subject of an unresolved arrest that has a direct and specific negative bearing on that person's ability to perform the duties or responsibilities necessarily related to the employment position;
- In determining whether the conviction or unresolved arrest is directly related to the employment position, the employer shall consider whether the employment position offers the opportunity for the same or a similar offense to occur and whether circumstances leading to the conduct for which the person was convicted or that is the subject of an unresolved arrest will recur in the employment position;
- The time that has elapsed since the conviction or unresolved arrest; and
- Any evidence of inaccuracy or evidence of rehabilitation or other mitigating factors.

Pre-Adverse Action Notice

If an employer intends to base an adverse action on an item(s) in the applicant or employee's conviction history, prior to taking any adverse action the employer shall provide the applicant or employee with a copy of the background check report, if any, and shall notify the applicant or employee of the prospective adverse action and the items forming the basis for the prospective adverse action.

Waiting Period

If, within seven days of the date that the notice is provided by the employer to the applicant or employee, the applicant or employee gives the employer notice, orally or in writing, of evidence of the inaccuracy of the item or items of conviction history or any evidence of rehabilitation or other mitigating factors, the employer shall delay any adverse action for a reasonable period after receipt of the information and during that time shall reconsider the prospective adverse action in light of the information.

Final Adverse Action Notice

Upon taking any final adverse action based upon the conviction history of an applicant or employee, an employer shall notify the applicant or employee of the final adverse action.

Florida (Gainesville) (Ordinance No. 2022-617)

Individualized Assessment

An employer may not take adverse action against an individual because of the individual's criminal history unless the employer has determined that the individual is unsuitable for the job based on an individualized assessment conducted by the employer.

An individualized assessment means an evaluation of the criminal history of an individual that includes, at a minimum, the following factors:

- The nature and gravity of any offense in the individual's criminal history;
- The age of the individual at the time of the offense;
- The length of time since the offense and completion of the sentence;
- The nature and duties of the job for which the individual has applied; and
- Any information demonstrating the individual's rehabilitation and good conduct since the occurrence of the criminal offense.

Pre-Adverse Action Notice

Prior to taking adverse action against an individual because of the individual's criminal history, an employer must:

- Inform the individual of the basis for the decision;
- Provide the individual with the criminal history records used by the employer in consideration of the individual's application; and
- Provide the individual a reasonable opportunity to provide the employer with additional context about the criminal history records and any information demonstrating the individual's rehabilitation and good conduct since the occurrence of the criminal offense.

Final Adverse Action Notice

An employer who takes adverse action against an individual based on the individual's criminal history must inform the individual in writing that:

- The adverse action was based on the individual's criminal history; and
- Include the following statement in the notice:

"This notice is provided in accordance with the City of Gainesville Code of Ordinances, Chapter 14.5, Section 14.5-181, which regulated the process and timing of criminal background checks conducted on job applicants."

Georgia (Ga. Code Ann. § 35-3-34)

Final Adverse Action Notice

In the event that an employment decision is made adverse to a person whose record was obtained from the Georgia Crime Information Center, the person will be informed by the business or person making the adverse employment decision of all information pertinent to that decision. This disclosure shall include information that a record was obtained from the Georgia Crime Information Center, the specific contents of the record, and the effect the record had upon the decision.*

*Please note that InCheck will report criminal history information from the original court of jurisdiction.

Georgia (Atlanta) (City of Atlanta Ordinances, Ch. 94, Article V §94-112)

Individualized Assessment:

Any adverse employment decision based on criminal history status shall not be taken unless the decision is based on how the criminal history relates to the position's responsibilities in accordance with the following considerations:

- Whether the applicant committed the offense;
- The nature and gravity of the offense;
- The time since the offense; and
- The nature of the job for which the applicant has applied.

Hawaii (Haw. Rev. Stat. § 378-2.5)

Individualized Assessment

Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

Illinois (775 ILCS 5/2-103.1)

Individualized Assessment

Unless otherwise authorized by law, it is a civil rights violation for any employer to use a conviction record as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment (whether "disqualification" or "adverse action"), unless:

- There is a substantial relationship between one or more of the previous criminal offenses and the employment sought or held; or
- "Substantial relationship" means a consideration of whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position.
- The granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

In making a determination, the employer shall consider the following factors:

- The length of time since the conviction;
- The number of convictions that appear on the conviction record;
- The nature and severity of the conviction and its relationship to the safety and security of others;
- The facts or circumstances surrounding the conviction;
- The age of the employee at the time of the conviction; and
- Evidence of rehabilitation efforts.

Pre-Adverse Action Notice

If, after considering the mitigating factors, the employer makes a preliminary decision that the employee's conviction record disqualifies the employee, the employer shall notify the employee of this preliminary decision in writing.

The notification shall contain all of the following:

- Notice of the disqualifying conviction(s) that are the basis for the preliminary decision and the employer's reasoning for the disqualification;
- A copy of the conviction history report, if any; and
- An explanation of the employee's right to respond to the notice of the employer's preliminary decision before that decision becomes final. The explanation shall inform the employee that the response may include, but is not limited to, submission of evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence in mitigation, such as rehabilitation.

Waiting Period

The employee shall have at least 5 business days to respond to the notification provided to the employee before the employer may make a final decision.

Final Adverse Action Notice

The employer shall consider information submitted by the employee before making a final decision. If an employer makes a final decision to disqualify or take an adverse action solely or in part because of the employee's conviction record, the employer shall notify the employee in writing of the following:

- Notice of the disqualifying conviction or convictions that are the basis for the final decision and the employer's reasoning for the disqualification;
- Any existing procedure the employer has for the employee to challenge the decision or request

Illinois (Chicago) (O2023-1329)

Individualized Assessment

An employer cannot use a conviction record as a basis to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure, or terms, privileges or conditions of employment, unless:

- There is a substantial relationship between one or more of the previous criminal offenses and the employment sought or held; or
 - "Substantial relationship" means a consideration of whether the employment position offers the opportunity for the same or a similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will recur in the employment position.
- The granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

In making a determination, the employer shall consider the following factors:

- The length of time since the conviction;
- The number of convictions that appear on the conviction record;
- The nature and severity of the conviction and its relationship to the safety and security of others;
- The facts or circumstances surrounding the conviction;
- The age of the employee at the time of the conviction; and
- Evidence of rehabilitation efforts.

Pre-Adverse Action Notice

If, after considering the mitigating factors, the employer makes a preliminary decision that the employee's conviction record disqualifies the employee, the employer shall notify the employee of this preliminary decision in writing.

The notification shall contain all of the following:

- Notice of the disqualifying conviction(s) that are the basis for the preliminary decision and the employer's reasoning for the disqualification;
- A copy of the conviction history report, if any; and
- An explanation of the employee's right to respond to the notice of the employer's preliminary decision before that decision becomes final. The explanation shall inform the employee that the response may include, but is not limited to, submission of evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence in mitigation, such as rehabilitation.

Waiting Period

The employee shall have at least 5 business days to respond to the notification provided to the employee before the employer may make a final decision.

Final Adverse Action Notice

The employer shall consider information submitted by the employee before making a final decision. If an employer makes a final decision to disqualify or take an adverse action solely or in part because of the employee's conviction record, the employer shall notify the employee in writing of the following:

- Notice of the disqualifying conviction (s) that are the basis for the final decision and the employer's reasoning for the disqualification;
- Any existing procedure the employer has for the employee to challenge the decision or request reconsideration; and
- The right to file a charge with the Chicago Commission on Human Relations.

Louisiana (La. Rev. Stat. Ann §23:291.2)

Individualized Assessment

When considering criminal history records, an employer shall make an individual assessment of whether an applicant's criminal history record has a direct and adverse relationship with the specific duties of the job that may justify denying the applicant the position. When making this assessment, an employer shall consider all of the following:

- The nature and gravity of the offense or conduct;
- The time that has elapsed since the offense, conduct, or conviction;
- The nature of the job sought.

Adverse Action Process

Upon written request by the applicant an employer shall make available to the applicant any background check information used during the hiring process.

Maryland (Montgomery County) (Montgomery County Code Sec. 27-73)

Pre-Adverse Action Notice

If an employer intends to rescind a conditional offer based on an item(s) in the applicant's arrest record or conviction record, before rescinding the conditional offer the employer must:

- Provide the applicant with a copy of any criminal record report;
- Notify the applicant of the intention to rescind the conditional offer and the items that are the basis for the intention to rescind the conditional offer; and
- Delay rescinding the conditional offer for 7 days to permit the applicant to give the employer notice of inaccuracy of an item or items on which the intention to rescind the conditional offer is based.

Final Adverse Action Notice

If an employer decides to rescind a conditional offer based on the arrest record or conviction record of an applicant, the employer must notify the applicant of the rescission of the conditional offer in writing.

Maryland (Prince Georges County) (Prince George's County Code of Ordinances Sec. 2-231.05)

Individualized Assessment

In making an employment decision based on an applicant's arrest record or conviction record, an employer shall conduct an individualized assessment, considering:

- Only specific offenses that may demonstrate unfitness to perform the duties of the position sought by the applicant;
- The time elapsed since the specific offenses; and
- Any evidence of inaccuracy in the record.

Pre-Adverse Action Notice

If an employer intends to rescind an offer of employment based on item(s) in the applicant's arrest or conviction record, before rescinding the offer of employment the employer shall:

- Provide the applicant with a copy of any criminal record report; and
- Notify the applicant, in writing, of the intention to rescind the offer of employment and the items that are the basis for the intention to rescind the offer of employment.

Waiting Period

Delay rescinding the offer of employment for seven (7) days to permit the applicant to give the employer notice of inaccuracy of an item or items on which the intention to rescind the offer of employment is based.

Final Adverse Action Notice

If an employer decides to rescind an offer of employment based on the arrest record or conviction record of an applicant, the employer shall notify the applicant of the rescission of the offer of employment in writing.

Massachusetts (803 CMR 2.20; Mass. Gen. Laws Ch. 93, § 62)

Pre-Adverse Action Notice

Before taking adverse employment action, if the action is based on the subject's Massachusetts Department of Criminal Justice Information Systems' (DCJIS) Criminal Offender Record Information (CORI)* or any other criminal history information, then the employer or volunteer organization shall:

- Comply with applicable federal and state laws and regulations;
- Notify the subject in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse employment action;
- Provide a copy of the subject's CORI or criminal history information to the subject;
- Identify the source of the CORI or criminal history information;
- Provide a copy of the requestor's CORI Policy, if applicable, to the subject;
- Identify the information in the subject's CORI or criminal history information that forms any basis for the potential adverse action;
- Provide the subject with the opportunity to dispute the accuracy of the information contained in the CORI or criminal history information;
- When CORI is considered as a part of a potential adverse action, provide the subject with a copy of DCJIS information regarding the process for correcting CORI.

Final Adverse Action Notice

Whenever employment involving a consumer is denied or terminated because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall, within ten business days of its decision to deny or terminate such employment, notify such consumer in writing against whom such adverse action has been taken. Said notice shall be in a clear and conspicuous format, no smaller than ten-point type, and shall contain the name, address, and toll-free telephone number of any consumer reporting agency which provided any consumer report which was reviewed or otherwise taken into account in the making of such adverse action and shall inform the consumer of his rights in substantially the following manner:

"You have the right to obtain a free copy of your credit report within sixty days from the consumer credit reporting agency which has been identified on this notice. The consumer credit reporting agency must provide someone to help you interpret the information on your credit report. Each calendar year you are entitled to receive, upon request, one free consumer report.

You have the right to dispute inaccurate information by contacting the consumer credit reporting agency directly. If you have notified a consumer credit reporting agency in writing that you dispute the accuracy of information in your file, the agency must then, within thirty business days, reinvestigate and modify or remove inaccurate information. The consumer credit reporting agency may not charge a fee for this service.

If reinvestigation does not resolve the dispute to your satisfaction, you may send a statement to the consumer credit reporting agency, to be kept in your file, explaining why you think the record is inaccurate. The consumer credit reporting agency must include your statement about the disputed information in a report it issues about you".

** Please note, InCheck does not offer a CORI search.*

Michigan (Grand Rapids) (Code of The City Of Grand Rapids Ch. 175, Article 2, Section 9.939)

Individualized Assessment

An outright ban on prospective employees with a criminal background is prohibited. Employers must carefully consider, on a case-by-case basis the following:

- The nature and severity of the crime;
- The age of the individual at the time of the crime;
- Whether there have been repeat offenses;
- Whether the individual maintained a good employment history before or after the conviction,
- Evidence of rehabilitation efforts; and
- Whether the crime for which the individual was convicted may pose a demonstrable risk to the health, safety or welfare of other employees or persons or to property.

Missouri (Columbia) (City of Columbia, Missouri Code of Ordinances, Chapter 12, Article V, Sec. 12-90)

Individualized Assessment

Employers are encouraged to not automatically ban jobseekers with a criminal history. Employers may make final employment-related decisions based on all of the information available to them, including consideration of the frequency, recentness and severity of a criminal record as well as rehabilitation efforts against the duties and responsibilities of the position.

Missouri (Kansas City) (Kansas City Code of Ordinances 38-104)

Individualized Assessment

It should be unlawful for an employer to base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.

Missouri (St. Louis) (St. Louis City Ordinance 71047)

Individualized Assessment

It should be unlawful for an employer to base a hiring or promotional decision on an applicant's criminal history or sentence related thereto, unless the employer can demonstrate that the employment-related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.

New Jersey (N.J. Rev. Stat. § 56:11-31)

Pre-Adverse Action Notice

In using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take an adverse action shall provide to the consumer to whom the report relates:

- A copy of the report; and
- A description in writing of the rights of the consumer under the "New Jersey Fair Credit Reporting Act," NJ Rev Stat § 56:11-28, and the federal "Fair Credit Reporting Act," 15 U.S.C. s.1681 et seq.

New York (N.Y. Corr. L. § 752-753; N.Y. Gen. Bus. Law § 380-G)

Individualized Assessment

No application for employment and no employment held by an individual shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

- There is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or
- The granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

In making a determination, the private employer shall consider the following factors:

- The public policy of the State of New York to encourage the employment of persons previously convicted of one or more criminal offenses;
- The specific duties and responsibilities necessarily related to the employment sought or held by the person;
- The bearing, if any, the criminal offense(s) for which the person was previously convicted will have on the fitness or ability to perform one or more such duties or responsibilities;
- The time which has elapsed since the occurrence of the criminal offense(s);
- The age of the person at the time of occurrence of the criminal offense(s);
- The seriousness of the offense(s);
- Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct; and

- The legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public.

In making a determination the employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense(s) specified therein.

Pre-Adverse Action Notice

When a consumer reporting agency provides a consumer report that contains criminal conviction information to a user, the entity requesting such report shall provide the subject of such report a printed or electronic copy of article twenty-three-A of the correction law governing the employment of persons previously convicted of one or more criminal offenses.

Final Adverse Action Notice

At the request of any person previously convicted of one or more criminal offenses who has been denied employment, an employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

New York (New York City) (Administrative Code of the City of New York § 8-107)

Individualized Assessment

Criminal convictions preceding employment.

It shall be an unlawful discriminatory practice for any employer to deny employment to any person or take adverse action against any employee by reason of such person or employee having been convicted of one or more criminal offenses, or by reason of finding the person lacks “good moral character” based on such person or employee having been convicted of one or more criminal offenses, unless:

- There is a direct relationship between one or more of the previous criminal offenses and employment sought or held by the individual; or
- The granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

In making a determination, the employer shall consider the Article 23-A factors:

- The public policy of the state of New York to encourage the employment of persons previously convicted of one or more criminal offenses;
- The specific duties and responsibilities necessarily related to the employment sought or held by the person;
- The bearing, if any, the criminal offense(s) for which the person was previously convicted will have on the fitness or ability to perform one or more such duties or responsibilities;
- The time which has elapsed since the occurrence of the criminal offense(s);
- The age of the person at the time of occurrence of the criminal offense(s);
- The seriousness of the offense(s);
- Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct;
- The legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public.

In making a determination the employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense(s) specified therein.

Criminal convictions during employment.

It shall be an unlawful discriminatory practice for any employer to take adverse action against any employee by reason of such person having been convicted during their employment of one or more criminal offenses, or by reason of finding the person lacks “good moral character” based on such person having been convicted during their employment of one or more criminal offenses, unless, after considering the relevant fair chance factors, the employer determines that either

- There is a direct relationship between the criminal conviction and the employment held by the person; or
- The continuation of the employment would involve an unreasonable risk to property, or to the safety or welfare of specific individuals or the general public.

In making a determination, the employer shall consider the NYC Fair Chance Factors:

- The policy of the City of New York to overcome stigma toward and unnecessary exclusion of persons with criminal justice involvement in the areas of licensure and employment;
- The specific duties and responsibilities necessarily related to the employment held by the person;
- The bearing, if any, of the criminal offense or offenses for which the applicant or employee was convicted, or that are alleged in the case of pending arrests or criminal accusations, on the applicant or employee’s fitness or ability to perform one or more such duties or responsibilities;
- Whether the person was 25 years of age or younger at the time of occurrence of the criminal offense or offenses for which the person was convicted, or that are alleged in the case of pending arrests or criminal accusations;
- The seriousness of such offense or offenses;
- The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public; and
- Any additional information produced by the applicant or employee, or produced on their behalf, in regards to their rehabilitation or good conduct, including history of positive performance and conduct on the job or in the community, or any other evidence of good conduct.

Pending arrests and criminal accusations preceding and during employment.

It shall be an unlawful discriminatory practice for any employer to take adverse action against any applicant or employee based on an arrest or criminal accusation that is pending, or by reason of finding the person lacks “good moral character” based on such a pending arrest or criminal accusation, unless, after considering the relevant fair chance factors, the employer determines that either

- There is a direct relationship between the alleged wrongdoing that is the subject of the pending arrest or criminal accusation and the employment sought or held by the person; or
- The granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

In making a determination, the employer shall consider the NYC Fair Chance Factors:

- The policy of the City of New York to overcome stigma toward and unnecessary exclusion of persons with criminal justice involvement in the areas of licensure and employment;
- The specific duties and responsibilities necessarily related to the employment held by the person;
- The bearing, if any, of the criminal offense or offenses for which the applicant or employee was convicted, or that are alleged in the case of pending arrests or criminal accusations, on the applicant or employee’s fitness or ability to perform one or more such duties or responsibilities;
- Whether the person was 25 years of age or younger at the time of occurrence of the criminal offense or offenses for which the person was convicted, or that are alleged in the case of pending arrests or criminal accusations;
- The seriousness of such offense or offenses;
- The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public; and

- Any additional information produced by the applicant or employee, or produced on their behalf, in regards to their rehabilitation or good conduct, including history of positive performance and conduct on the job or in the community, or any other evidence of good conduct.

Adverse Action Notification Process

Applicants

After extending an applicant a conditional offer of employment, an employer, may inquire about the applicant's arrest or conviction record if before taking any adverse employment action based on such inquiry, the employer:

- Provides a written copy of the inquiry to the applicant;
- Requests from the applicant information relating to the relevant fair chance factors;
- Performs an analysis as required for "criminal convictions preceding employment" and "pending arrests and criminal accusations preceding and during employment;"
- Provides a written copy of such analysis to the applicant in a manner to be determined by the New York City Commission on Human Rights, which shall include but not be limited to supporting documents that formed the basis for an adverse action based on such analysis and the employer's reasons for taking any adverse action against such applicant; and
- The NYCCHR has prepared a [Fair Chance Notice](#) that employers may use to comply with this requirement. As long as the material substance concerning the specific factors in the Fair Chance Analysis does not change, the Notice may be adapted to an employer's preferred format.
- After giving the applicant the inquiry and analysis in writing, allows the applicant a reasonable time to respond, which shall be no less than five business days and during this time, holds the position open for the applicant.
- After receiving additional information from an applicant, an employer must examine whether the new information changes the employer's Fair Chance Analysis. If, after communicating with an applicant, the employer decides not to hire them, it must relay that decision to the applicant in writing within a reasonable period of time.

Employees

Before taking any adverse employment action against a current employee based on a criminal conviction, or pending arrest or criminal accusation, the employer, employment agency or agent thereof shall:

- Request from the employee information relating to the relevant fair chance factors;
- Perform an analysis as required above for "criminal convictions during employment" and "pending arrests and criminal accusations preceding and during employment;"
- Provide a written copy of such analysis to the employee, which shall include but not be limited to supporting documents that formed the basis for an adverse action based on such analysis and the employer's reasons for taking any adverse action against such employee; and
- The NYCCHR has prepared a [Fair Chance Notice](#) that employers may use to comply with this requirement. As long as the material substance concerning the specific factors in the Fair Chance Analysis does not change, the Notice may be adapted to an employer's preferred format.
- After giving the employee the inquiry and analysis in writing, allow the employee a reasonable time to respond before taking adverse action.
- After receiving additional information from an applicant, an employer must examine whether the new information changes the employer's Fair Chance Analysis. If, after communicating with an applicant, the employer decides not to hire them, it must relay that decision to the applicant in writing within a reasonable period of time.

Pennsylvania (18 Pa.C.S. § 9125)

Individualized Assessment

Felony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied.

Final Adverse Action Notice

The employer shall notify in writing the applicant if the decision not to hire the applicant is based in whole or in part on criminal history record information.

Pennsylvania (Philadelphia) (The Philadelphia Code §9-3504)

Individualized Assessment

A prospective employer shall not reject an applicant or employee based on a criminal record, unless such record includes conviction for an offense that bears such relationship to the employment sought that the employer may reasonably conclude that the applicant or employee would present an unacceptable risk to the operation of the business or to co-workers or customers, and that exclusion of the applicant or employee is compelled by business necessity.

An employer shall make a determination regarding such risk only after reviewing the applicant's or employee's specific record and the particular job being sought, and conducting an individualized assessment of the risk presented. Such assessment shall include:

- The nature of the offense;
- The time that has passed since the offense;
- The applicant's or employee's employment history before and after the offense and any period of incarceration;
- The particular duties of the job being sought;
- Any character or employment references provided by the applicant or employee; and
- Any evidence of the applicant's or employee's rehabilitation since the conviction.

Adverse Action Notification Process

If an employer rejects an applicant or employee for a job opening based in whole or in part on criminal record information, the employer shall notify the applicant in writing of such decision and its basis, and shall provide the applicant or employee with a copy of the criminal history report. The employer shall allow the applicant or employee ten (10) business days to provide evidence of the inaccuracy of the information or to provide an explanation.

Oregon (Portland) (Portland City Code 23.10.030)

Individualized Assessment

It is not an unlawful practice for an employer to rescind a conditional offer of employment based upon an applicant's criminal history if an employer determines in good faith that a specific offense or conduct is job related for the position in question and consistent with business necessity.

In making the determination of whether an applicant's criminal history is job related for the position in question and consistent with business necessity, an employer must conduct an individualized assessment of:

- The nature and gravity of the criminal offense;
- The time that has elapsed since the criminal offense took place; and
- The nature of the employment held or sought.

Final Adverse Action Notice

If, after consideration of an applicant's criminal history an employer rescinds the conditional offer of employment, the employer shall notify the applicant in writing of its decision and shall identify the relevant criminal convictions on which the decision is based.

Texas (Austin) (Austin City Code §4-15-4)

Individualized Assessment

An employer may not take adverse action against an individual because of the individual's criminal history unless the employer has determined that the individual is unsuitable for the job based on an individualized assessment conducted by the employer.

Individualized assessment means an evaluation of the criminal history of an individual that includes, at a minimum, the following factors:

- The nature and gravity of any offenses in the individual's criminal history;
- The length of time since the offense and completion of the sentence; and
- The nature and duties of the job for which the individual has applied.

Final Adverse Action Notice

An employer who takes adverse action against an individual based on the individual's criminal history must inform the individual in writing that the adverse action was based on the individual's criminal history.

Washington (RCW §19.182.020)

Pre-Adverse Action Notice

In using a consumer report for employment purposes, before taking any adverse action based in whole or part on the report, a person shall provide to the consumer to whom the report relates:

- The name, address, and telephone number of the consumer reporting agency providing the report;
- A description of the consumer's rights under the Washington Fair Credit Reporting Act pertaining to consumer reports obtained for employment purposes;

Waiting Period

In using a consumer report for employment purposes, before taking any adverse action based in whole or part on the report, a person shall provide to the consumer to whom the report relates a reasonable opportunity to respond to any information in the report that is disputed by the consumer.

Washington (Seattle) (Seattle Municipal Code, Title 14, Chapter 14.17)

Individualized Assessment

Employers shall not carry out a tangible adverse employment action solely based on an employee's or applicant's criminal conviction record or pending criminal charge, unless the employer has a legitimate business reason for taking such action.

A "legitimate business reason" shall exist where, based on information known to the employer at the time the employment decision is made, the employer believes in good faith that the nature of the criminal conduct underlying the conviction or the pending criminal charge either:

- Will have a negative impact on the employee's or applicant's fitness or ability to perform the position sought or held, or
- Will harm or cause injury to people, property, business reputation, or business assets, and the employer has considered the following factors:
 - the seriousness of the underlying criminal conviction or pending criminal charge; and
 - the number and types of convictions or pending criminal charges; and
 - the time that has elapsed since the conviction or pending criminal charge, excluding periods of incarceration; and
 - any verifiable information related to the individual's rehabilitation or good conduct, provided by the individual; and
 - the specific duties and responsibilities of the position sought or held; and
 - the place and manner in which the position will be performed.

Pre-Adverse Action Notice

Before taking any tangible adverse employment action solely based on an applicant's or employee's criminal conviction record, the conduct relating to an arrest record, or pending criminal charge, the employer shall identify to the applicant or employee the record(s) or information on which they are relying and give the applicant or employee a reasonable opportunity to explain or correct that information.

Waiting Period

Employers shall hold open a position for a minimum of two business days after notifying an applicant or employee that they will be making an adverse employment decision solely based on their criminal conviction record, the conduct relating to an arrest record, or pending charge in order to provide an applicant or employee a reasonable opportunity to respond, correct or explain that information. After two business days, employers may, but are not required, to hold open a position until a pending charge is resolved or adjudicated or questions about an applicant's criminal conviction history or conduct relating to an arrest are resolved.

Washington, D.C. (D.C. Code § 32–1342)

Individualized Assessment

Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant or take an adverse action against an applicant for a legitimate business reason. The employer's determination of a legitimate business reason must be reasonable in light of the following factors:

- The specific duties and responsibilities necessarily related to the employment sought or held by the applicant;
- The bearing, if any, of the criminal offense for which the applicant was previously convicted will have on their fitness or ability to perform one or more such duties or responsibilities;
- The time which has elapsed since the occurrence of the criminal offense;
- The age of the applicant at the time of the occurrence of the criminal offense;
- The frequency and seriousness of the criminal offense; and
- Any information produced by the applicant, or produced on their behalf, in regard to their rehabilitation and good conduct since the occurrence of the criminal offense.

Final Adverse Action Notice

If an applicant believes that a conditional offer was terminated or an adverse action was taken against the applicant on the basis of a criminal conviction, the applicant may request, within 30 days after the termination or adverse action, that the employer provide the applicant within 30 days after the receipt of the request:

- A copy of any and all records procured by the employer in consideration of the applicant, including criminal records; and
- A notice that advises the applicant of their opportunity to file an administrative complaint with the District of Columbia Office of Human Rights.

Wisconsin (WIST §111.335)

Individualized Assessment

It is an act of employment discrimination to refuse to hire, employ, admit, or license any individual, to bar or terminate from employment or labor organization membership any individual, or to discriminate against any individual in promotion, compensation, or terms, conditions or privileges of employment or labor organization membership because of an arrest record or conviction record.

Notwithstanding, it is not employment discrimination because of arrest record to refuse to employ or license, or to suspend from employment or licensing, any individual who is subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity. Notwithstanding, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual if any of the following applies to the individual:

- The individual has been convicted of any felony, misdemeanor, or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity;
- The individual is not bondable under a standard fidelity bond or an equivalent bond where such bondability is required by state or federal law, administrative regulation, or established business practice of the employer.

About The Author

Jonathan Culbertson received his Juris Doctorate from the University of Cincinnati College of Law in 2016 and was admitted to the State of Pennsylvania Bar in 2018. Jonathan joined InCheck in 2021 as Compliance Manager and promptly became a member of the Professional Background Screening Association.

As Senior Compliance Manager, Jonathan helps the InCheck team and clients stay up to date with the continuously changing federal, state, and local laws and regulations that influence how background screenings should be conducted, so that all parties can develop policies and procedures that are compliant. Jonathan takes great pride in helping the team and clients better understand the requirements of laws such as the federal Fair Credit Reporting Act, fair credit reporting state laws, equal employment opportunity laws, fair chance hiring laws, pay equity laws, marijuana laws, and many other state and local law trends. These laws are continuously evolving, complex, and mandate many requirements. As such, he is passionate about sharing his knowledge of new and changing legislation, compliance issues, and industry best practices through newsletters, blogs, vlogs, and white papers.



InCheck
7500 West State Street,
Suite 200
Wauwatosa, WI 53213

www.inchecksolutions.com
hello@inchecksolutions.com



Please note that the information contained in this white paper is being provided for informational purposes only and should not be construed as legal advice. Please consult your legal counsel to ensure compliance with all federal, state, and local laws.