

(updated December 11, 2014)

What is the Law About?

The *Fair Criminal Record Screening Amendment Act of 2014* prohibits most employers in the District of Columbia from asking about criminal backgrounds on job applications or during the interview process. The law also allows individuals who believe employers improperly asked about or looked into their criminal backgrounds to file a complaint with the DC Office of Human Rights (OHR) for free. If OHR determines the employer did violate the law, the employer may have to pay a fine, part of which goes to the person who was improperly asked about their criminal background.

Which Employers Does the Law Cover?

The law applies to employers with 11 or more employees who are hiring for job positions that are located in the District. This includes District government, corporations, universities, small businesses and non-profit organizations, among others. The federal government is exempt from the law. Additional exceptions apply.*

What Can't Employers Ask About?

Application Form

On an application form, the law *prohibits* employers from asking about:

- Arrests;
- Criminal accusations (that are not pending or did not result in a conviction); or
- Criminal convictions.

Interview Process

During the interview process before a conditional job offer is made, the employer is prohibited from asking about arrests, criminal accusations or criminal convictions, and is not allowed to do a criminal background check.

Conditional Job Offer

An employer may ask you about and look into criminal convictions *only after* extending a conditional offer of employment (at no point can an employer ask you about arrests or criminal accusations). An employer who properly asks you about a criminal conviction can only withdraw the offer or take a negative action against you for a legitimate business reason.** If a negative action is taken or the job offer is withdrawn, you have *30 days to submit a request* to the employer for:

- A copy of all interview and hiring-related records created for you by the employer in consideration of your application, including your criminal records;*** and

After receiving your request, the employer has 30 days to provide you the information.

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What If They Do Ask?

If an employer improperly asks about your criminal background, or takes a negative action against you after a conditional job offer because of your criminal background, you can file a free complaint with OHR *within 365 days***** of the alleged violation occurring. Two types of complaints can be filed online at ohr.dc.gov or in-person at OHR:

Application Form Complaint (Type A Complaint)

Type A complaints can be filed when arrests, criminal accusations or criminal convictions are asked about on an application form.

- Type A complaints accepted by OHR are scheduled for a mandatory mediation with the complainant and employer, in search of an agreement between both.
- If mediation fails, the complaint will be investigated and an initial determination made within 90 days of the case being accepted by OHR, in most instances.
- If probable cause of a violation is found, parties will have an additional opportunity to reach an agreement before a final determination is made by the Commission on Human Rights.

Interview Process Complaint (Type B Complaint)

Type B complaints can be filed when arrests or criminal accusations are asked about at any point, or criminal convictions are asked about before a conditional job offer is made.

- Type B complaints accepted by OHR are scheduled for a mandatory mediation with the complainant and employer, in search of an agreement between both.
- If mediation fails, the complaint will be investigated and an initial determination made within 120 days of the case being accepted by OHR, in most instances.
- If probable cause of a violation is found, parties will have an additional opportunity to reach an agreement before a final determination is made by the Commission on Human Rights.

Monetary Penalties and Awards

If the Commission on Human Rights determines a violation occurred, employers may be fined, with half of the amount going to the person who experienced the violation, and half to the District government. Penalties can be awarded up to the following amounts:

- \$1000 from employers with 11 to 30 employees;
- \$2500 from employers with 31 to 99 employees; and
- \$5000 from employers with 100 or more employees.

* *Additional exceptions include: (1) those where federal or District law or regulations require considering an applicant's criminal history; (2) when a position is designated by government program or obligation to encourage employment of those with criminal histories; (3) or those who provide programs or services to minors or vulnerable adults.*

** *A reasonable business purpose will be determined using six factors: (1) Specific duties and responsibilities necessarily related to the employment; (2) Fitness or ability of the person to perform one or more job duties or responsibilities given the offense; (3) Time elapsed since the occurrence of the offense; (4) Age of the applicant when the offense occurred; (5) Frequency and seriousness of the offense; and (6) Information provided by applicant or on his or behalf that indicates rehabilitation or good conduct since the offense occurred.*

*** *An example letter to provide to an employer is available at ohr.dc.gov/page/returningcitizens or at the OHR office.*

**** *The alleged violation must have occurred on or after the law's effective date of December 11, 2014.*