

(updated December 11, 2014)

Role of the DC Office of Human Rights

The District of Columbia Office of Human Rights (OHR) is charged with enforcing the Fair Criminal Record Screening Amendment Act of 2014, which aims to prevent unlawful screening of a job applicant's criminal background. OHR will investigate filed complaints that allege violations of the law, and can impose penalties when violations are found.

Employers Subject to the Law

The law applies only to employers in the District with 11 or more employees. Exceptions apply for some employers, including:

- those where federal or District law or regulations require considering an applicant's criminal history;
- when a position is designated by government program or obligation to encourage employment of those with criminal histories; and
- those who provide programs or services to minors or vulnerable adults.

What the Law Requires of Employers

Application Form and Interview Process

On an initial application form or during the interview process, the law *prohibits* employers from asking about:

- Arrests;
- Criminal accusations made against the applicant that are not pending or did not result in a conviction; or
- Criminal convictions on the initial employment application form.

Conditional Job Offer

An employer may ask about criminal convictions *only after* extending a conditional offer of employment (at no point can an employer ask about arrests or criminal accusations). An employer who properly asks about a criminal conviction can only withdraw the offer or take adverse action against the applicant for a legitimate business reason that is reasonable when considering all of these 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.

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Required Documentation

After a conditional job offer is made, an employer who takes adverse action against an applicant because of a criminal conviction must provide the following if the applicant believes and communicates the action was taken because of their criminal background:

- A notice advising the affected applicant about the right to file a complaint at OHR.*

Within 30 days of the adverse action, an applicant can request the following, which the employer must provide within 30 days of receipt of the request:

- A copy of all records procured by the employer in consideration of the affected applicant, including criminal records.

Complaint Process

An administrative complaint can be filed with OHR *within 365 days*** of the alleged violation. There is no private cause of action in other courts under this law. Two types of complaints can be filed with 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 docketed by OHR are scheduled for a mandatory mediation with the complainant and employer.
- If mediation fails, the complaint will be investigated and an initial determination made within 90 days of the case being docketed, in most instances.
- If probable cause of a violation is found, parties will have an additional opportunity to settle 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 before a conditional job offer is made.

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

Penalties for Violations

If the Commission on Human Rights determines a violation occurred, penalties may be imposed with half of the amount going to the complainant and half to the District, up to the following amounts:

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

* Notice templates for your use can found on the OHR website at ohr.dc.gov/page/returningcitizens.

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

- Disclaimer: This fact sheet is intended to assist employers but is not an exhaustive review of the law. -