
FACT SHEET: Fair Chance Hiring

Seventy (70) million adults living in the U.S.—about one in three American adults—has a criminal record that will show up on a routine background check.¹ This creates a serious barrier to employment for Americans who are trying to support themselves and their families.

Securing and holding employment is imperative to successful re-entry, but qualified job seeking people with records struggle against immense odds to do so.

- More than 90 percent of companies use background checks in their hiring decisions, putting jobs further out of reach for the one in three adults who are living with a record.²
- Having a record reduces the likelihood of a job callback or offer by nearly 50 percent³ and contributes to high levels of unemployment among prime-age working men; 34 percent of unemployed men ages 25 to 54 have been convicted of a crime.⁴
- Of the 262,000 offenders that were released from federal prison between 2002 and 2006:
 - 50 percent of those who could not secure employment during the time of their supervised release committed a new crime or violated the terms of their release and were sent back to prison.⁵
 - Ninety-three (93) percent of those who were able to secure employment during the entirety of their supervised release were able to successfully reintegrate back into their communities and not return to prison.⁶

Fair chance hiring refers to policies that help people involved in the criminal justice system—formerly incarcerated people and individuals with arrest or probation records—find and secure jobs for which they are well-qualified. Removing questions about criminal history from job applications, known as “banning the box,” allows employers to judge applicants on their qualifications first, without the stigma of a record.

Fair chance hiring policies do not prohibit background checks, but they postpone them until later in the hiring process (i.e. the conditional offer stage of the process). The most effective policies not only ban the box, they ensure that criminal history information is used fairly and in

¹ Jo Craven McGinty, *How Many Americans Have a Police Record? Probably More than You Think*, WALL STREET JOURNAL, August 7, 2015, <http://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802>

² Michelle Natividad Rodriguez and Maurice Emsellem, *65 Million Need Not Apply*, NATIONAL EMPLOYMENT LAW CENTER, March 2011, http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf

³ Devah Pager, *The Mark of a Criminal Record*, NORTHWESTERN UNIVERSITY, March 2003, http://scholar.harvard.edu/pager/files/pager_ajs.pdf

⁴ Maurice Emsellem and Michelle Natividad Rodriguez, *Advancing a Federal Fair Chance Hiring Agenda*, NATIONAL EMPLOYMENT LAW CENTER, January 2015, <http://www.nelp.org/content/uploads/2015/01/Report-Federal-Fair-Chance-Hiring-Agenda.pdf>

⁵ United States Attorney’s Office Southern District of Alabama, *Ex-Offender Re-entry Initiative*, 2002, <http://www.justice.gov/usao-sdal/programs/ex-offender-re-entry-initiative>

⁶ *Id.*

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accordance with the Equal Employment Opportunity Commission's (EEOC) guidance on the use of criminal backgrounds in employment.⁷

The guidance requires employers to make individualized assessments and consider the following:

1. The nature or gravity of the offense or conduct;
2. The time elapsed since the conviction and/or completion of the sentence; and
3. The nature of the job sought or held.⁸

Fair chance hiring is good for the economy and good for business.

- When people with records have jobs, it increases their tax contributions, boosts sales taxes, and saves taxpayers money by reducing the likelihood of a person becoming involved in the criminal justice system again.
- Failing to employ millions of people with records costs America \$57 to \$65 billion a year in economic gains.⁹

Fair chance policies have been adopted by cities, counties, states, the federal government and private employers across the country.

- Eighteen (25) states and more than 150 cities and counties have embraced ban the box and other fair chance policies.
- Major corporations like Target, Bed Bath & Beyond, Starbucks, and Home Depot have also chosen to ban the box.¹⁰
- The federal government issued a rule directing federal agencies to “ban the box” on job applications and delay inquiry into criminal history until later in the application process, thereby giving job applicants with records a fair chance to work in government.¹¹

The Federal Government should be a model employer and help open the doors of opportunity for people with records by issuing an executive order and presidential

⁷ Equal Employment Opportunity Commission, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions*, April 2012, http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

⁸ *Id.*

⁹ John Schmitt and Kris Warner, *Ex-offenders and the Labor Market*, CENTER FOR ECONOMIC AND POLICY RESEARCH, November 2010, <http://www.cepr.net/documents/publications/ex-offenders-2010-11.pdf>

¹⁰ “Ban the Box” is a Fair Chance for Workers with Records, NATIONAL EMPLOYMENT LAW CENTER, July 2015

<http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-Fact-Sheet.pdf>

¹¹ See “Recruitment, Selection, and Placement (General) and Suitability.” *U.S. Office of Personnel Management*. Dec. 1, 2016. 81 FR 86555 - 86561. Available at <https://www.federalregister.gov/documents/2016/12/01/2016-28782/recruitment-selection-and-placement-general-and-suitability>.

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memorandum that bans the box and ensures that federal contractors comply with the EEOC guidance.

- Twenty-two (22) percent of U.S. workers are employed by federal contractors or their sub-contractors.¹² A fair chance hiring executive order would help open up these jobs to skilled applicants with records.

¹² *Id.*