



# Fair Chance Ordinance Employer Tool Kit – Video 2 Initiating a Background Check After a Conditional Job Offer

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# How to get the most out of this video

- Have you watched the FCO Overview Video?
- This is a video in a series. Watch the videos in order.
- Print the presentation slides and have them available to take notes as you watch this video.
- [Print the FCO Employer Tool Kit - https://sfgov.org/olse/fair-chance-ordinance-fco](https://sfgov.org/olse/fair-chance-ordinance-fco)



# San Francisco Fair Chance Ordinance (FCO) Compliant Employment Process

## Job Posting, Application, & Interview

- Must state that you will consider qualified applicants with arrest & conviction records for employment in compliance with the FCO.
- Can't ask about arrests or convictions.

## May Conduct Background Check After a Conditional Job Offer (Optional)

- Conduct individualized assessment – Hire?
- Preliminary notice to revoke job offer.
- Reassessment if new information provided – Hire?

## Revocation of Job Offer

Final notice to revoke job offer.

Hire/Promote

# Initiating a Background Check

**After a conditional offer of employment has been made, the employer may conduct a background check.**

To make a conditional job offer provide:

- Letter
- Authorization Form
- Fair Chance Ordinance Notice



# Conditional Offer of Employment

1 of 3

1. Clarify that a job offer is contingent of the background report findings.



# Conditional Offer of Employment

2 of 3

2. List the 7 categories that may not be considered from the background report.

**The FCO prohibits covered employers from ever considering the following:**

- An arrest not leading to a conviction, except for unresolved arrests.
- Participation in a diversion or deferral of judgment program.
- A conviction that has been dismissed, expunged, otherwise invalidated, or inoperative.
- A conviction in the juvenile justice system.
- An offense other than a felony or misdemeanor, such as an infraction.
- A conviction that is more than 7 years old (*unless the position being considered supervises minors or dependent adults*).
- A conviction for decriminalized conduct, including the non-commercial use and cultivation of cannabis.



# Conditional Offer of Employment Criteria

3 of 3

3. Clarify for the applicant that if the background report leads to revoking the job offer, the applicant will have at least 7 business days to submit the following:
  - a) Inaccuracies with the background findings
  - b) Information about rehabilitation or mitigating circumstances



# **Sample Conditional Offer of Employment & Notice of Conviction Background Check**

## **San Francisco Fair Chance Ordinance**

[Date]

Dear [Applicant Name]:

We are writing to make you a conditional offer of employment for the position of [INSERT POSITION]. Before this job offer becomes final, we will check your conviction history. The form attached to this letter asks for your permission to check your conviction history and provides more information about that background check.

After reviewing your conviction history report, we will either:

- a. Notify you that this conditional job offer has become final; or
- b. Notify you in writing that we intend to revoke (take back) this job offer because of your conviction history.

As required by the San Francisco Fair Chance Ordinance, we will NOT consider any of the following information:

- An arrest not leading to a conviction—except under specific circumstances identified below with respect to an unresolved arrest;
- Participation in, or completion of, a diversion or a deferral of judgment program;
- A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise made inoperative;
- A conviction or any other determination in the juvenile justice system, or information regarding a matter considered in, or processed through, the juvenile justice system;
- A conviction that is more than 7 years old (measured from the date of sentencing); or
- A criminal offense other than a felony or a misdemeanor—such as an infraction.



As required by the San Francisco Fair Chance Ordinance, we will consider whether your conviction history is directly related to the duties of the job we have offered you.

We will consider all of the following:

- The nature and seriousness of the offense
- The amount of time since the offense
- The nature of the job

We will notify you in writing if we plan to revoke this job offer after reviewing your conviction history. You will have an opportunity to respond before our decision becomes final. We will identify conviction(s) that concern us, give you a copy of the background check report, and allow you at least 7 business days to respond with information showing the conviction history report is inaccurate and/or with information about your rehabilitation or mitigating circumstances. We will review any information you timely submit and then decide whether to finalize or take back this conditional job offer. We will notify you of that decision in writing.

Sincerely,

[Employer]

Enclosures: Authorization for Background Check (as required by the U.S. Fair Credit Reporting Act and California Investigative Consumer Reporting Agencies Act), San Francisco Fair Chance Ordinance Notice

# Background Check Review

Are there issues with the background report that leads to revoking the job offer?

- No – You may continue with the hiring process
- Yes – Take the required steps to comply with the FCO

**No automatic rejections**





# Continue to Employer Tool Kit – Video 3 After the Background Report, Individualized Assessment and Reassessment Process



Office of Labor Standards Enforcement

# Contact OLSE

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FCO

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