



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

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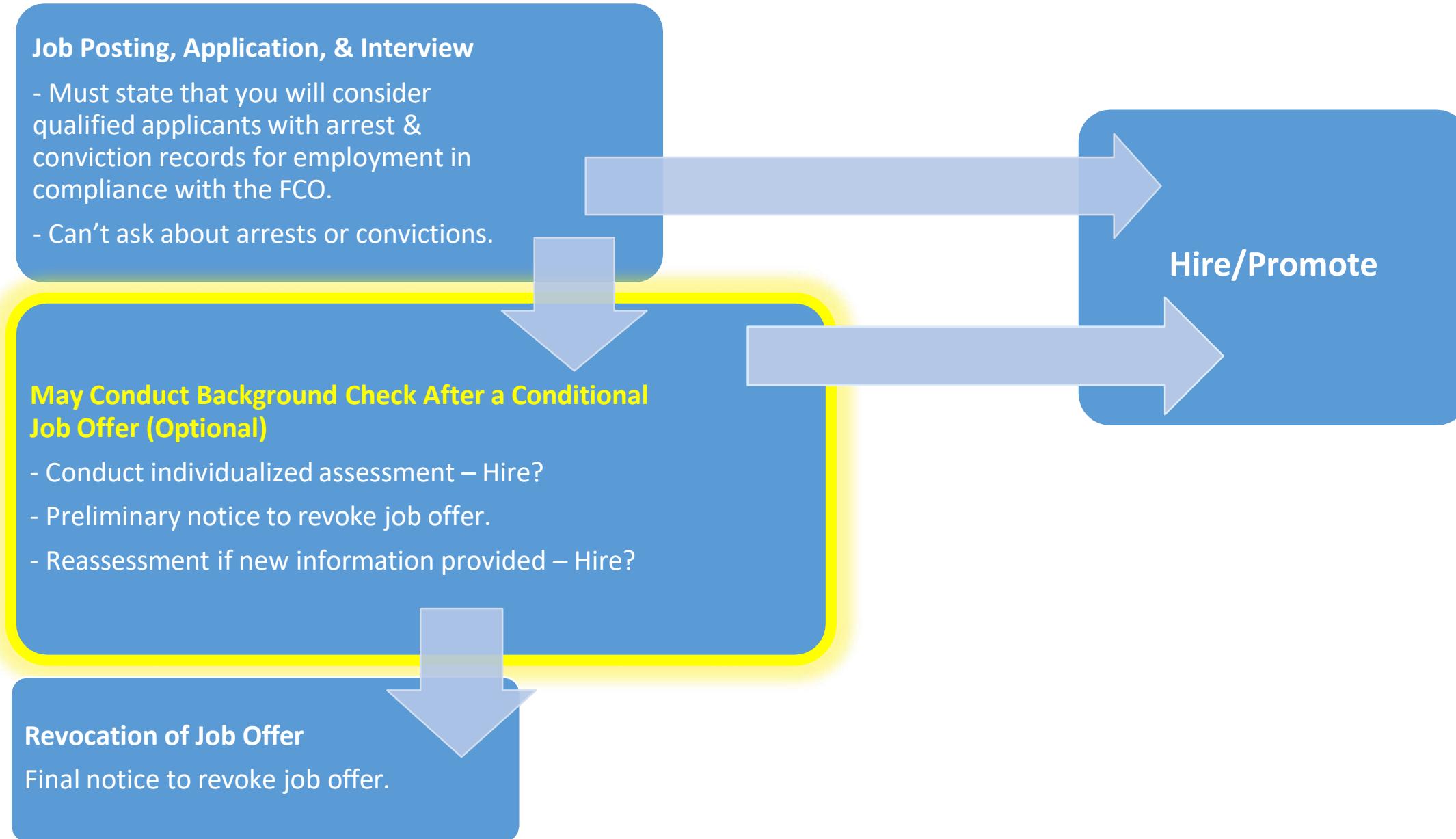


How to get the most out of this video

- 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



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

Employers with 20+ Employees Must Post This Notice for Applicants and Employees

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

OFFICIAL NOTICE TO JOB APPLICANTS AND EMPLOYEES

Fair Chance Ordinance
Police Code, Article 49

Starting August 13, 2014, the Fair Chance Ordinance (San Francisco Police Code, Article 49) requires employers to follow strict rules regarding the use of arrest and conviction records in hiring and employment decisions. The ordinance covers job applicants and employees who would be or are performing work at whole, or in a substantial part, in San Francisco and applies to employers who have 20 or more employees (regardless of the employees' locations).

Certain matters are off-limits. An employer may never ask about, require disclosure of, or consider, an arrest not leading to a conviction (other than an unsealed arrest that is still undergoing criminal investigation or trial), participation in a diversion or deferral of judgment program, a conviction that has been expunged or made inoperative, any conviction in the juvenile justice system, a conviction more than 7 years old, and a criminal offense other than a felony or misdemeanor. Matters that are off-limits cannot be used by the employer for any reason at any stage of the hiring process.

An employer cannot ask about an individual's conviction history or unsealed arrests at the start of the hiring process. This includes through a job application form, interview, conversation, or otherwise.

A mandatory interview process for matters not off-limits. Only after a live interview has been conducted, or an individual has been offered employment, is the employer allowed to ask about an individual's conviction history (except as to matters that are off-limits) and unsealed arrests. Only those convictions and unsealed arrests that directly relate to the individual's ability to do the job may be considered in making an employment decision.

Before the employer may take an adverse action such as firing, refusing to hire, discharging, or not promoting an individual based on a conviction history or unsealed arrest, the employer must give the individual an opportunity to present evidence that the information is inaccurate. The individual has been rehabilitated, or other mitigating factors. The individual has seven days to respond, at which point the employer must delay any adverse action for a reasonable time and reconsider the adverse action. The employer must notify the individual of any final adverse action.

Evidence of rehabilitation include satisfying parole probation, receiving education/training, participating in alcohol/drug treatment programs, letters of recommendation, and age at which the individual was convicted. Mitigating factors include coercion, physical or emotional abuse, and untreated substance abuse/mental illness that contributed to the conviction.

Prohibition. Where federal or state law imposes a criminal history requirement that conflicts with a requirement of the Fair Chance Ordinance, the federal or state law will apply.

No Retaliation. An employer may not take an adverse action against an applicant or employee for exercising their rights under this ordinance, including filing a complaint with the Office of Labor Standards Enforcement (OLSE). If you receive information, or wish to report an employer that you believe has violated this ordinance, please contact the OLSE at 415-554-5192 or email OLSE@sfgov.org.

Employers must post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted. For copies of this notice in Spanish, Chinese, Filipino, Vietnamese, and Russian and www.sfcgov.org/olse or call (415) 554-5192.



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

Office of Labor Standard Enforcement – FCO

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1 Dr. Carlton B. Goodlett Place, Room 430

San Francisco, CA 94102

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FCO

<https://sfgov.org/olse/fair-chance-ordinance-fco>



Office of Labor Standards Enforcement