



# Fair Chance Ordinance Employer Tool Kit – Video 3 After the Background Report, Individualized Assessment and Reassessment Process

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Office of Labor Standards Enforcement

# 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**

# **Sample Criminal History Individual Assessment Form**

## **San Francisco Fair Chance Ordinance**

**Employer Name:**

**Applicant Name:**

**Position Applied For:**

**Date of Conditional Offer:**

**Date of Assessment:**

**Date of Criminal History Report:**

**Assessment Performed By:**

1) Specific duties and responsibilities of the job:

[List]

2) Description of the criminal convictions and unresolved arrests. Why is the conduct is of concern with respect to the position?

Under the San Francisco Fair Chance Ordinance, the following background information may not be considered at any time:

- An arrest not leading to a conviction (except unresolved arrests).
- Participation in a diversion or deferral of judgment program.
- A conviction that has been dismissed or expunged.
- A conviction in the juvenile justice system.
- A conviction that is more than 7 years old. \*Except supervision of minors, dependent adults, and persons over 65 years old.
- An offense other than a felony or misdemeanor (i.e. traffic ticket).
- Any decriminalized offense (such as some cannabis convictions).

[Describe the convictions and unresolved arrests. If any are a conduct of concern, explain why]

- 3) Are the actions directly-related to the applicant's ability to perform the job?

[Describe how the actions from the background report are directly related to the job duties. Does the conduct have a direct and specific negative bearing for the applicant to perform the job? Does the employment position offer the opportunity for the same offense to occur?]

- 4) How long ago did the criminal activity occur:

**Based on the above, we are considering  RESCINDING our offer of employment. If rescinding, our decision is based on the following:**

[If rescinding, list/describe reasoning between specific aspects of the applicant's criminal history with risks inherent in the duties of the position]

# Individualized Assessment

1 of 7

Individualized assessment includes:

1. List the specific duties and responsibilities of the job.



# Individualized Assessment

2 of 7

Individualized assessment includes:

2. Describe the criminal convictions and unresolved arrests. Why are they a concern?
  - a) Unresolved arrest – An arrest that is undergoing an active pending criminal investigation or trial that has not yet been resolved. An arrest has been resolved if the arrestee was released and no accusatory pleading was filed charging him or her with an offense, or if the charges have been dismissed or discharged by the district attorney or the court.



# Individualized Assessment

3 of 7

Individualized assessment includes:

3. Are the actions directly-related to the applicant's ability to perform the job?
  - a) Does the conduct have a direct and specific negative bearing for the applicant to perform the job? What are they?
  - b) Does the employment position offer the opportunity for the same offense to occur?



# Individualized Assessment Criteria

4 of 7

Individualized assessment includes:

4. How long ago did the criminal activity occur?
  - a) Did the criminal activity occur recently? Has it been several years?
5. At what age was last criminal activity?



# Individualized Assessment Criteria

5 of 7

Individualized assessment includes:

6. What are the demonstrations of growth and evidence of rehabilitation?
  - a) How has the applicant demonstrated signs of growth such as education and job training?
  - b) Has the applicant completed a rehabilitation program such as successfully completing parole or education.



# Individualized Assessment Criteria

6 of 7

Individualized assessment includes:

7. Does the job offer support such as supervision, training, work environment, or counseling to prevent a reoccurrence of the criminal activity?
  - a) How does the job support the applicant to be a productive at work?
  - b) What systems are in place for the job to be done successfully?



# Individualized Assessment Criteria

7 of 7

What is the outcome of the analysis of the background report and the individualized assessment?

- No issues - You may hire the person
- Issues – Continue to next step





After Conducting an Individualized  
Assessment, your Firm Chooses  
to Revoke the Job Offer



Office of Labor Standards Enforcement

**Sample Employer Notice of Preliminary  
Decision to Revoke Job Offer  
San Francisco Fair Chance Ordinance**

[Date]

Dear [Applicant]:

After reviewing the results of your background report, we have made a preliminary (non-final) decision to revoke (take back) our previous job offer for the position of [Insert Position] because of the following convictions and/or unresolved arrests:

[List convictions and/or unresolved arrests]

**Attached to this notice are the following:**

- A copy of your background report.
- San Francisco Fair Chance Ordinance Notice

**Your Right to Respond:** *You may respond to this letter before our decision to revoke the job offer becomes final. Within 7 days<sup>1</sup> from when you first receive this notice, you may send us:*

send us:

- Evidence of rehabilitation or mitigating circumstances
- Information challenging the accuracy of the conviction history listed above

Please send any additional information you would like us to consider to:

[Insert employer contact person's name, mailing address, email, and phone number]

**Here are examples of information you may send us:**

- Evidence that you were not convicted or not arrested for one or more of the offenses or charges we listed above or that the background report is inaccurate (such as the number of convictions listed).
- Facts or circumstances surrounding the above referenced convictions or unresolved arrests such as coercive circumstances, intimate physical or emotion abuse, untreated substance abuse, and untreated mental illness.
- The time that has passed since the conduct that led to conviction, unresolved arrest, or since your release from incarceration.
- The length and consistency of employment history or community involvement (such as volunteer activities) before and after the convictions or unresolved arrests.
- Employment or character references from people who know you, such as letters from teachers, counselors, supervisors, communication organizations, clergy, and probation or parole officers.
- Evidence that you attended school, job training, or counseling.
- Evidence that you have performed the same type of work since your conviction.

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<sup>1</sup> Applicant must be allowed at least 7 business days to respond.

# Preliminary Decision to Revoke Job Offer

1 of 4

## Items to send to applicant:

1. Notice of preliminary decision to revoke job offer because of conviction history or unresolved arrests
2. Fair Chance Ordinance Notice
3. Copy of the background check

## Best Practice - Obtain confirmation of receipt:

Send your preliminary decision via a method where you can verify that the notice has been received by the applicant (e.g. certified mail confirmation receipt, request email response confirming receipt)



# Preliminary Decision to Revoke Job Offer

2 of 4

Notice of preliminary decision to revoke offer includes:

1. Specify the preliminary (non-final) adverse actions that you plan to take and the issues on the background report that led to this decision.



# Preliminary Decision to Revoke Job Offer

3 of 4

Notice of preliminary decision to revoke job offer includes:

2. Must provide at least **7 business days from the date of receipt** for the applicant to respond with evidence of inaccuracies with the background findings, rehabilitation, or mitigating circumstances.
  - a) Business days are Monday – Friday, not including holidays
  - b) Holidays are those defined by the City and County of San Francisco
  - c) [Holiday schedule](https://sfgov.org/city-and-county-san-francisco-holidays) <https://sfgov.org/city-and-county-san-francisco-holidays>



# Preliminary Decision to Revoke Job Offer

4 of 4

Notice of preliminary decision to revoke job offer includes:

3. Clarify how the applicant will submit the response. Submit by email, U.S. mail, or in-person?
4. Include the individualized assessment findings to clarify the thought process in making the decision to preliminary revoke the job offer and allow for a response.





# Examples of Clarification Documentation in Response to the Notice of Preliminary Decision to Revoke Job Offer



# Documentation in Response to Preliminary Decision to Revoke Job Offer

1 of 6

Examples of inaccuracies with the background findings:

1. Is the background findings for the correct person?
2. Evidence that the applicant was not convicted or not arrested for the stated criminal acts.
3. Are the number of convictions on the report accurate? Did the criminal act occur as many times as the findings indicate?
4. Is the date of conviction accurate?



# Documentation in Response to Preliminary Decision to Revoke Job Offer

2 of 6

Examples of evidence of rehabilitation or mitigating circumstances:

1. Facts or circumstances surrounding the convictions or unresolved arrests such as coercive circumstances, intimate physical or emotion abuse, untreated substance abuse, and untreated mental illness.
2. The time that has passed since the conduct that led to conviction, unresolved arrest, or since being released from incarceration.



# Documentation in Response to Preliminary Decision to Revoke Job Offer

3 of 6

Examples of evidence of rehabilitation or mitigating circumstances:

3. The length and consistency of employment history or community involvement (such as volunteer activities) before and after the convictions or unresolved arrests.
  
4. Employment or character references such as letters from teachers, counselors, supervisors, communication organizations, clergy, and probation or parole officers.



# Documentation in Response to Preliminary Decision to Revoke Job Offer

4 of 6

Examples of evidence of rehabilitation or mitigating circumstances:

5. Evidence that the applicant attended school, job training, or counseling.
6. Evidence that the same type of work has been performed since the conviction or unresolved arrest.



# Documentation in Response to Preliminary Decision to Revoke Job Offer

5 of 6

Examples of evidence of rehabilitation or mitigating circumstances:

7. Applicant is bonded under a federal, state, or local bonding program or other job readiness program.
  - a) Bonding programs secure job placement for hard-to-place job seekers by issuing Fidelity bonds to businesses to cover a specific number of months of employment at no cost to the job applicant or the employer.



# Documentation in Response to Preliminary Decision to Revoke Job Offer

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Examples of evidence of rehabilitation or mitigating circumstances:

8. Any other evidence of rehabilitation efforts, such as
  - a) completion of or active participation in rehabilitation programs such as anger management, alcohol, and drug treatment
  - b) evidence showing compliance with the terms and conditions of probation or parole
  - c) evidence showing present fitness for the job





When you receive information...  
Review the Documentation that is in  
Response to the Preliminary Decision to  
Revoke Job Offer



Office of Labor Standards Enforcement

# Individual Reassessment Form

Use the Sample Individualized Assessment Form to perform the **reassessment**.

SF FCO Employer Tool Kit

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



Office of Labor Standards Enforcement

# **Sample Criminal History Individual Assessment Form**

## **San Francisco Fair Chance Ordinance**

<u>Employer Name:</u>	<u>Applicant Name:</u>
<u>Position Applied For:</u>	<u>Date of Conditional Offer:</u>
<u>Date of Assessment:</u>	<u>Date of Criminal History Report:</u>
<u>Assessment Performed By:</u>	

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[If rescinding, list/describe reasoning between specific aspects of the applicant's criminal history with risks inherent in the duties of the position]

# Conduct an Individualized Reassessment

1 of 3

Consider the following:

1. Did the applicant respond timely within the 7 business days of receiving the notice?
2. Does the applicant need additional days to provide a response? (e.g. waiting for corrected background report, certification, recommendation letter, or due to unforeseen conditions)



# Conduct an Individualized Reassessment

2 of 3

Consider the following:

3. Was there an error made in the background report?
4. What is the evidence of rehabilitation and good conduct?



# Conduct an Individualized Reassessment

3 of 3

Will you hire the applicant after completing the individualized reassessment?

- If yes, hire the applicant
- If no, send notice of your Final Decision to revoke the job offer.





# Continue to Employer Tool Kit – Video 4

## Notice of Final Determination to Revoke Job Offer



Office of Labor Standards Enforcement

# Contact OLSE

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FCO

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



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