



New York City “Ban the Box” FAQs

The Fair Chance Act ([Int. 0318-2014](#))

1. Who does the law apply to?

The Fair Chance Act (“FCA”) applies to employers with four or more employees, and only when the position is in New York City. The law does not apply extraterritorially—it applies when the position is in New York City or the job requires the individual to be in New York City such that New York City is the “locus of the job.” It generally does not apply to New York City residents applying for jobs outside the city, even if the company’s headquarters and HR team are based in New York City.

2. What is the effective date?

October 27, 2015.

3. When is it permissible to ask an applicant about criminal records?

After extending a conditional offer of employment, the employer is permitted to inquire into an applicant’s pending arrest or conviction record.

4. Does the law affect when you can conduct a background check?

Yes. Background checks can only be conducted after a conditional offer of employment. In addition, the new law requires employers to delay asking applicants for authorization to obtain a background check until after a conditional offer of employment is made.

5. Are there any “pre-adverse” notification requirements beyond those of the FCRA?

Yes. If, after evaluating the applicant according to Article 23-A, an employer wishes to decline employment because a direct relationship or unreasonable risk exists, it must follow the “Fair Chance Process”:

1. Disclose to the applicant a written copy of any inquiry it conducted into the applicant’s criminal history;
2. Provide the applicant with a copy of the Article 23-A analysis using the Commission’s Fair Chance Notice; and
3. Allow the applicant at least three business days, from receipt of the inquiry and analysis, to respond to the employer’s concerns.

The Commission requires an employer to disclose a complete and accurate copy of every piece of information it relied on to determine that an applicant has a criminal record, along with the date and time the employer accessed the information. The applicant must be able to see and challenge the same criminal history information relied on by the employer. Employers who hire consumer reporting agencies to conduct background checks can fulfill this obligation by supplying a copy of the CRA’s report on the applicant, provided the consumer report is the only information relied upon.



6. Are there any “adverse action” notification requirements beyond those of the FCRA?

Yes. After receiving additional information from an applicant, an employer must examine whether it changes its Article 23-A analysis. If, after communicating with an applicant, the employer decides not to hire him or her, it must relay that decision to the applicant.

7. Are there any other additional notice/disclosure requirements?

No.

8. Does the law impose any additional restrictions or requirements on employers?

After extending a conditional offer, any employer that wants to withdraw its offer based on criminal history information must first consider the Article 23-A factors. If, after doing so, an employer still wants to withdraw its conditional offer, it must follow the Fair Chance Process set forth above.

9. Does the law allow employment applications to still include the criminal history question with a carve-out for this jurisdiction?

No. Employment applications for positions in New York City should not include a criminal history question or any statements regarding criminal history inquiries or background checks.

10. Does the law provide any exceptions?

The Act provides an exemption for and does not apply to any actions taken by an employer pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history. Under the Act, a “federal” law includes any rules or regulations promulgated by a self-regulatory organization (“SRO”) as defined by Sec. 3(a)(26) of the Securities Exchange Act of 1934. Thus, employers in the financial services industry are exempt from the FCA when complying with industry-specific rules and regulations promulgated by an SRO.

The Act also provides an exemption for police or peace officers, and for certain positions within the department of citywide administrative services.

The FCA exception for situations in which employment is barred based on criminal history applies only if the employer’s decision is compelled by law. If the employer’s choice is discretionary, then the FCA applies.

11. Does the law supersede or preempt any other law?

No.