

Best Practices in Fair-Chance Enforcement: Ensuring Work Opportunity for People with Convictions

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The lessons learned and best practices are synthesized from [three case studies](#) of fair chance hiring laws from San Francisco, Seattle, and the District of Columbia. These briefs are intended to support government agency efforts to reduce barriers for people with conviction records.²

Introduction

An estimated 70 million people in the United States—nearly one in three adults—have arrest or conviction records.³ Many are discouraged from applying for work due to the application “check-box” asking about criminal history. The “box” becomes an even greater barrier when employers toss out all the applications with the checked box, arbitrarily narrowing the pool of jobseekers without regard to qualifications.

Removing conviction inquiries from job applications is known as “ban the box.” Fair-chance hiring policies include ban-the-box and other policies that create a structured hiring process to ease barriers. Today, 17 states and more than 100 cities and counties have embraced fair-chance hiring; six states extend it to private employers.⁴ It has been promoted as a federal best practice and adopted by employers such as Walmart, Target, and Koch Industries.⁵

Key Components of Fair-Chance Legislation for Stronger Enforcement

- **Ban-the-box and delay conviction history inquiries until conditional offer.** Job-application violations are straightforward to investigate. Waiting until the final hiring stage clarifies the rationale for an adverse decision, facilitating enforcement.
- **Require individualized assessments** considering the age of the offense, its job relevance, and evidence of rehabilitation. A clear standard reduces blanket bans.
- **Provide the candidate notice** of the rationale for the potential denial and the opportunity to review background-check results, before a denial. Background checks are rife with errors. This step avoids misinformed decisions.
- **Strong penalties for employers and incentives for complainants**, such as directing the penalty funds to complainants, or having significant monetary remedies available will incentivize employers to comply and jobseekers to come forward.
- **Anonymity and retaliation protection** help jobseekers and workers come forward.
- **Agency-directed investigations** ensure that agencies are not wholly relying on complaints and can direct their resources to high-impact cases.

Takeaways from San Francisco, Seattle, and the District of Columbia

Although each of the three jurisdictions have variations in their fair-hiring laws and are at different stages of implementation and enforcement, common themes arise. From these local experiences, we have identified the best practices for government agencies invested in upholding the civil rights, human rights, or labor standards of their local communities.

Laying the Groundwork for the Law

Even before legislation is contemplated, there are steps a government agency with a human rights or civil rights mandate may take that will set the stage for any fair-chance law and will facilitate effective enforcement. [Read more](#) about the enforcement agency's comprehensive strategy at this preliminary stage in this brief about San Francisco.

- **Leverage a Civil or Human Rights Mandate.** In the federal context, the U.S. Equal Employment Opportunity Commission has identified the use of arrest- or conviction-record information as a concern under the enforcement of Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, national origin, and other protected categories.⁶ Taking the EEOC's lead, a local entity with a civil or human rights mandate could include information on bias experienced by persons with arrest or conviction records in all government anti-discrimination trainings.
- **Take Formal Positions.** Legislation is not the only avenue for action. Some municipal human rights, civil rights, or human relations entities have the authority to pass resolutions or issue letters supporting fair-chance efforts. Work with these entities to pass a resolution or take formal positions that prohibit the arbitrary discrimination of people with arrest or conviction records. For example, an agency could issue "letters of concern" when employers are identified as having discriminatory practices.
- **Stakeholder Meetings and Trainings.** To encourage dialogue and critical thinking about bias against people with records, convene public meetings in all of your jurisdiction's diverse communities. In that same vein, invite businesses and others to stakeholder meetings to collect information about any concerns with hiring people with records and to conduct anti-bias training.
- **Engage Law Enforcement.** There is a national effort to engage law enforcement in adopting an anti-discrimination culture and being a partner in reducing recidivism. Support law enforcement leaders on their "smart on crime" and rehabilitation efforts, making the connection to the civil and human rights efforts to destigmatize people with past records and expand employment opportunities.

Be Prepared Before the Law Goes into Effect

After the law has been passed, there is a critical window before the effective date. This is an opportunity for the agency to set the tone for effective enforcement of the law.

- **Build Community Relationships.** Develop and maintain strong relationships with community-based organizations and the employer community, particularly with people with records in leadership. The agency's positive reputation will help maximize its outreach about the new law and pave the way for jobseekers and employers to engage

with the agency. [Read more](#) about how San Francisco, Seattle, and the District of Columbia provide examples of this strategy.

- **Stakeholder Group.** Create a collaborative stakeholder group to provide counsel and feedback on implementation and enforcement of the law. Participants in the group could include the enforcement agency, legal-advocate community groups, jobseekers with records, and employers. As appropriate, the group could disseminate regular findings to help identify opportunities to strengthen the outcomes. [More information](#) about a formalized stakeholder group can be found in the Seattle brief.
- **Accessible Materials.** Through consultation with stakeholders, ensure that any materials developed are language-accessible and disseminated broadly through the venues that will maximize outreach to employers and jobseekers. Recommended materials include those tailored specifically to jobseekers and to employers, FAQs about the law and filing complaints, a model notice of rights, and complaint forms. Examples of materials are provided [here](#).
- **A Complaint Process That Works.** To cultivate trust, it is critical that the enforcement agency develop an accessible, transparent complaint process that is thorough, yet responsive. A key component is a triaged complaint process that can fast-track certain cases. For example, job-application violations can be quickly resolved. [Read more](#) in the policy brief on the District of Columbia for an effective complaint process.

The Early Stages of When the Law Goes into Effect

As a new law becomes effective, this critical initial stage of implementation requires significant education and outreach to the community and stakeholders. These strategies are maximized with an appropriate, earmarked budget for outreach, education, and staff.

- **Robust Employer Outreach.** To ensure that employers understand the new law, develop targeted strategies for small, medium, and large companies and include anti-bias education. Focus on employers who lack access to typical avenues of information, such as immigrant-owned businesses. To maximize success, designate staff to manage relationships with employers. [Read more](#) about Seattle’s strategy, which included earned media, ethnic media, public service announcements, and bus and radio ads.
- **Reach Marginalized Jobseekers.** Providing know-your-rights trainings and resources to jobseekers will help ensure they are able to exercise their rights. Conducting trainings and holding forums in community spaces that formerly incarcerated people trust will maximize outreach. Local community groups have deep local ties and skills in popular education that are critical to connecting with hard-to-reach jobseekers. For example, in San Francisco the enforcement agency contracted with community groups to provide outreach and facilitate the complaint process for wage-and-hour laws.⁷
- **Leverage Community Resources.** Provide regular trainings for community-based leaders and service providers on all the laws within the agency’s purview using a “train the trainers” framework. Armed with this information, these trained individuals serve as a trusted source of counsel for jobseekers. In addition, these trainings facilitate connections between community-based organizations and agency staff, which promotes transparency and reciprocity. [Read more](#) about the District of Columbia’s model.

Ensuring Strong Compliance

The early stages of implementation of the law focus on education and outreach. To maximize the enforcement strategy, monitor compliance and identify enforcement gaps.

- **Promulgate Formal Rules.** Adopt formal rules interpreting the local law within the first year of implementation. These rules are an opportunity for the agency to maximize the levers provided in the law to ensure enforcement. Feedback through the stakeholder group can ensure the rules address enforcement gaps.
- **Track Complaints and Document Compliance.** Document the complaints received including demographic information, the type of complaint, industry, and method and time expended to resolve. Identify opportunities to collect information on compliance through other enforcement activities. For example, if the agency conducts any site visits or conducts surveys for other laws within the agency's purview, take advantage of these opportunities to gauge compliance. For [more information](#), see San Francisco's model.
- **Leverage Resources and Be Creative.** Local jurisdictions have agencies that regularly interface with the public. As in San Francisco, train staff in these departments on the fair-chance laws to help support referrals. Besides partnerships with obvious stakeholders such as community-based organizations and formerly incarcerated-led groups, consider additional partnerships to maximize your resources. In Seattle, the enforcement agency partnered with business students to conduct employer outreach. Social media and earned media are low-cost methods of educating the public about the law. [Read more](#) about the District of Columbia's exemplary model for cutting-edge media.
- **Strategic, Directed Investigations.** After ample outreach and education, agencies should engage in agency-directed investigations. Efficient use of limited government resources requires prioritization. By directing its investigations to the industries and occupations that are identified as high-risk or may have a large impact, these agency-directed investigations can have a positive ripple effect. [Seattle](#) provides an example.

Next Steps: Making Fair Chance a Priority

San Francisco, Seattle and the District of Columbia offer multiple approaches to becoming a "fair chance" jurisdiction. In each locality, however, the fair-chance law is enforced by agencies with a civil rights and nondiscrimination purview. An initial exploration should entail a review of the municipal non-discrimination and equal employment opportunity laws, including understanding enforcement.

While each jurisdiction has varied financial and staff resources as well as differing political environments, they are aligned in their prioritization of changing the narrative about people with records. Staff and allies who are willing to tap into the breadth of support and increased national awareness of the barriers faced by people with records are essential in this effort. Moreover, as each of the jurisdictions has demonstrated, government staff working in partnership with community based experts make successful teams. ■

End Notes

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³ Maurice Emsellem and Michelle Natividad Rodriguez, "Advancing a Federal Fair Chance Hiring Agenda: Background Check Reforms in Over 100 Cities, Counties & States Pave the Way for Presidential Action," NELP (Jan. 2015) at fn. 2 (www.nelp.org)

⁴ Numbers were accurate as of June 1, 2015. See NELP, "Ban the Box: U.S. Cities, Counties, and States Adopt Fair Hiring Policies to Reduce Barriers to Employment of People with Conviction Records" (June 2015) (www.nelp.org/publication/ban-the-box-fair-chance-hiring-state-and-local-guide/)

⁵ The U.S. EEOC issued an [Enforcement Guidance](#) on the consideration of criminal records in 2012, officially endorsing removing conviction questions from job applications. In addition, President Obama's initiative, My Brother's Keeper Task Force, issued a 90-day [report](#) recommending "ban the box."

⁶ See U.S. Equal Employment Opportunity Commission, "EEOC Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964" (April 25, 2012).

⁷ Diego Rondón Ichikawa and Rebecca Smith, "Delivering \$15: Community-Centered Wage and Hour Enforcement in Seattle," NELP (Oct. 2014) at 13.