

Fair Chance Hiring for Employers

Part Three: Adopting Recruitment Strategies that Welcome People with Records

By Beth Avery, Senior Staff Attorney

For most jobs, employer background checks are unnecessary. However, if your company performs background checks for some or all positions, it can adopt policies to reduce unfair barriers to hiring workers with arrest and conviction records. NELP's eight-part "Fair Chance Hiring for Employers" series of policy briefs comprehensively explores the steps employers can take toward fair chance hiring. Part Three details how your company can develop recruiting strategies and job announcements that attract and welcome workers with records.

Ensuring opportunities for workers with records requires more than simply removing questions about conviction history from your job applications. Start by reviewing the language your company uses to describe and attract applicants with records as well as your company's approach to recruitment, employee advancement, and pay equity. The following are five ways your company can begin making changes at the start of your hiring process.

A. Include affirmative language about hiring people with records on job announcements

The benefits of adopting more inclusive hiring practices will be limited if your company does not explicitly communicate to jobseekers with records that you will fairly consider their applications. Jobseekers with records frequently report a sense of hopelessness after encountering numerous rejections based on their records. Many may assume they won't be considered for the job and decline to even apply. Employers can help counteract that reluctance by revising the language in all job announcements.

As a first step, remove any language signaling that people with records won't be hired. For example, eliminate ambiguous language indicating that the applicant "must pass a background check" or must have "good moral character"—phrases that discourage individuals with a wide variety of records from applying.

Next, go further by adding affirmative statements to job announcements about your company's dedication to fair chance hiring. Just as employers have come to regularly include equal opportunity language in job announcements to signal that they do not discriminate against women and people of color, so too should they affirm their commitment to fairly

considering people with records. In addition to listing race, gender, disability, and other factors, your company's equal opportunity and affirmative action statement should indicate that qualified applicants will be considered for employment without discrimination based on "prior arrest or conviction."

Even better, take a step beyond non-discrimination and let people with records know they are welcome. In line with recommendations from the [New York City Commission on Human Rights](#), consider adopting language like "People with arrest and conviction histories are encouraged to apply" or "We value diverse experiences, including prior contact with the criminal legal system."

Some jurisdictions, including the [City of Los Angeles](#) and [San Francisco](#), require employers to state in job advertisements that the employer will consider applicants with records in a manner consistent with their fair chance laws. Other jurisdictions, including the State of [California](#), provide suggested language that employers may voluntarily include on job advertisements and application forms.

Employers in some industries are legally required to conduct background checks on all or most employees and may wish to advise applicants of that fact. When crafting any such statement, however, be mindful of how easy it is to discourage applicants with records through the mere mention of a background check. Vague warnings like "must pass background check" or even "background check required" will likely deter qualified candidates with records from applying.

B. Adopt people-first, humanizing language to welcome people with records

When describing people with records in job postings, applications, and internal communications, avoid stigmatizing terminology such as "ex-offender," "ex-convict," "felon," or "criminal." Such terms focus identity on former involvement in the criminal legal system, ignoring who a person is today and what they can contribute in their role in your company. Instead, adopt language that centers on the person, such as a "person with an arrest or conviction record." Commit staff time to editing existing documents, and encourage staff, contractors, and even the media to use humanizing language.

"Just as we, as a culture, have gotten used to using the term 'LGBTQ,' we need to afford the people of our movement the same recognition and right to define ourselves, in and on our own terms."

— Daryl Atkinson, Co-Director, Forward Justice¹

While some people may argue that these terms are clunky and inefficient, any such inconvenience pales in comparison to the harm that stigmatizing language can cause for people with records. Such terms are "devoid of humanness," instead labeling people as "things," explains Eddie Ellis, founder of the Center for NuLeadership. "We habitually underestimate the power of language. . . . The worst part of repeatedly hearing your negative definition of me is that I begin to believe it myself."²

Using stigmatizing terminology can undermine your company's efforts toward fair chance hiring. External communications that use negative language may dissuade qualified individuals from applying to your company—both because it indicates they are unlikely to be hired and because such language hints at a toxic workplace culture. Internal communications that continue to use negative terminology will cause existing employees with records to feel unwelcome and subtly reinforce stereotypes and unconscious biases among your employees.

“Calling me inmate, convict, prisoner, felon, or offender indicates a lack of understanding of who I am, but more importantly what I can be. I can be and am much more than an ‘ex-con,’ or an ‘ex-offender,’ or an ‘ex-felon.’”

— *Eddie Ellis, Founder, Center for NuLeadership*³

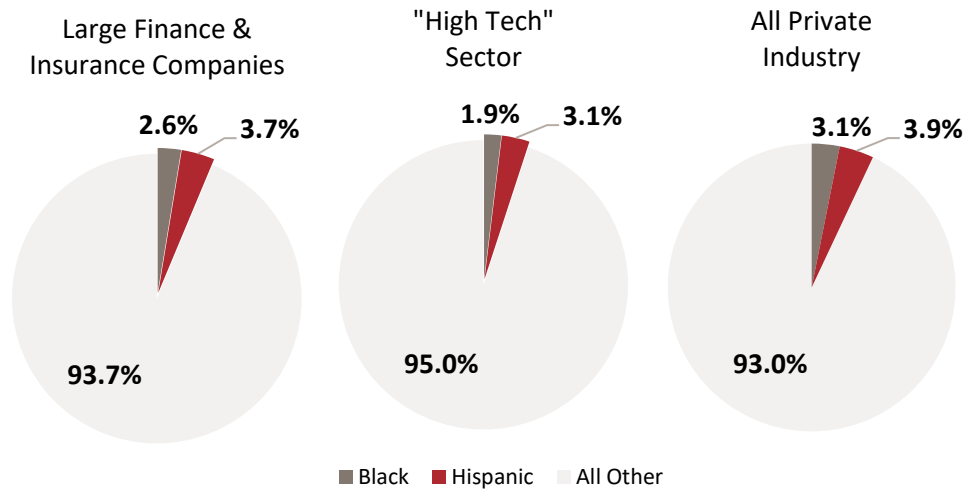
C. Recruit and hire people with records at all levels of the company

Time and again, employers offer formerly incarcerated people only dead-end jobs that lack room for growth, or they relegate applicants with records to entry-level positions that do not match the workers' qualifications, talents, and experience. Worse yet, workers with records are expected to be grateful for any job opportunity, even temporary positions and those without good pay or benefits.

Your company can help counter these harmful trends by hiring people with records into more senior-level positions. Work closely with partner organizations created by and for people with records to reach a broad audience of potential employees with records. Share job announcements for roles at all levels with those partners, encouraging them to share widely among the communities with which they work. It may be helpful to designate a specific sourcer or recruiter to work directly with those community organizations and ensure ongoing communication.

Relegating workers with records to undervalued positions is yet another form of discrimination that reinforces racial segregation in the workplace. Most of corporate America is overwhelmingly white, especially in senior positions, with Black and Latinx workers concentrated in the most junior, lowest-paid jobs. For example, at large finance and insurance companies, nearly 9 in 10 of the highest-paid, senior-most employees are white, whereas Black workers represent just 2.6 percent and Latinx workers just 3.7 percent of those employees.⁴ Similarly, a mere 1.9 percent of top-level tech employees are Black and 3.1 percent are Hispanic.⁵ Across all private industry, an average of only 3.1 percent of these top-level employees are Black and 3.9 percent are Hispanic.⁶

Little Diversity Atop the Corporate Ladder: Black & Hispanic Representation Among Executives, Senior Officials, and Managers



Despite growing evidence that diverse companies perform better⁷ and a trend toward increasingly naming racial diversity as a company value, Black representation among high-level positions in certain industries has actually *decreased* in recent years.⁸

Fair chance hiring is not a silver bullet to undo the effects of centuries of systemic racism in the labor market. Nevertheless, opening good jobs to people with records can help contribute to a more racially integrated workforce because people with records are disproportionately Black, Latinx, and Indigenous. It is one strategy that companies must be willing to try in order to begin to address the undeniable, ongoing problem of racial segregation across the labor market.

D. Focus on building employee skills instead of requiring applicant credentials

Replacing extended lists of professional requirements with a summary of qualities that are truly necessary to do a job—specific skills, talents, and competencies—can help your institution avoid unnecessarily excluding strong applicants. Job announcements should not require specific educational degrees or certifications unless they are vital to carrying out a given role. People with records often have skills companies need but might lack formal credentials. Employers should therefore assess what aspects of a candidate’s past may demonstrate the actual qualities and skills sought. Sourcing, recruiters, and human resources staff should be taught to recognize how surviving the criminal legal system often demonstrates resilience and tenacity, and they should be instructed not to weed out resumes that reflect training and work experiences obtained while incarcerated.

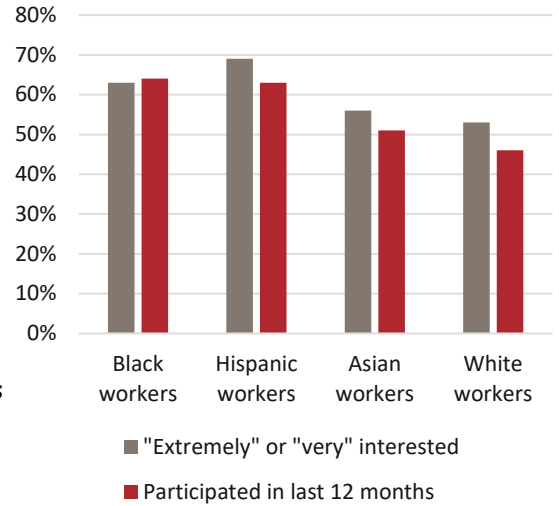
“It’s about making managers more accountable for mentoring, developing, and building talent.”
— *Obed Louissaint, Senior Vice President for Transformation and Culture, IBM*⁹

Moreover, employers can attract diverse talent—as well as improve retention and advancement of existing employees—by developing the skills of new hires instead of limiting their talent pools to applicants who already possess those skills. Apprenticeships and other employer-provided training programs can especially benefit workers with records, many of whom have previously lacked access to educational opportunities or been denied admission because of their records.

Polling reveals that training opportunities are especially important to workers of color in general. While most workers report much interest in employer-provided opportunities to build skills and highly value such offerings when evaluating job opportunities, Black and Hispanic workers are the racial/ethnic groups most likely to both express interest in and take advantage of such opportunities.¹⁰ Importantly, most workers who participate in training programs thereafter report an increased standard of living and improved quality of life.¹¹ Relevant to retention, 71 percent of workers who participated in training report increased overall satisfaction with their job and career.¹²

Employers in various sectors are realizing that the formal qualifications previously required for many jobs are unnecessary, and that a training course, for example, could suffice in place of requiring a bachelor’s degree.¹³ Instead of waiting for experienced individuals to apply for job openings, employers should offer paid skill-building opportunities and managers should be made more accountable for mentoring and developing talent among current employees.

Interest & Participation in Skill-Building Opportunities



Racial Equity & Workers with Records

This series of policy briefs urges employers to adopt fair chance employment policies to improve opportunities for workers with records. But while necessary, fair chance policies are not sufficient to eliminate the disadvantages faced by workers with records. Because racism and the criminal legal system are so interrelated, your company must also focus on enhancing racial equity more broadly. Employment policies that disadvantage workers of color will inevitably hold back a large proportion of workers with records because racism permeates the criminal legal system and people with records are disproportionately Black and Latinx.

Across the nation, working people of color are segregated into the lowest-paid, least stable, and most dangerous jobs.¹⁴ After controlling for education, 87 percent of occupations in the United States can be classified as racially segregated.¹⁵ This stratification perpetuates racial wage gaps and contributes to growing racial wealth gaps. For example, Black women earn an average of just 63 cents for every dollar earned by a white man, regardless of their education level,¹⁶ and the median Black household possesses approximately 12 cents for every dollar of wealth held by the median white family.¹⁷

E. Clearly offer living wages and benefits for all jobs, and take additional steps to enhance pay equity

Workers with records need and deserve safe, good-paying, stable jobs. Yet people with records are often offered only jobs that are temporary, pay inadequate wages, or lack benefits.¹⁸ Raising the floor for all workers and ensuring pay equity are crucial to improving job quality for people with records.

Ensuring that even your most junior positions are good jobs—earning a living wage and benefits—will help you attract and retain a strong, diverse workforce, including people with records. Reducing your reliance on temp positions is a critical step toward creating good jobs. Temp workers, who are disproportionately Black and Latinx, experience an average wage penalty of 22 percent compared with non-temp employees doing the same work.¹⁹ Workers with records can become trapped in temp positions, so make sure that workers with records are not unfairly passed over when converting temp workers to direct hires.

Ensure workers with records have access to good jobs with fair pay:

- Offer permanent instead of temp positions;
- Provide benefits to all workers;
- Ensure even your lowest wage is a living wage;
- Eliminate pay history inquiries;
- List pay in job postings;
- Allow employees to share pay information; and
- Conduct annual pay equity audits.

In addition to ensuring that all jobs at your company are good jobs, your company can take several steps to promote pay equity. First, never ask for pay history from job applicants or base salaries on that information. Basing future pay on past pay perpetuates wage inequality for people with records, many of whom have lower salary histories after being denied good jobs in the past. The practice also hinders broader racial and gender pay equity because Black and female workers are more likely to be currently underpaid.²⁰ Numerous laws across the country prohibit salary history inquiries, and many large companies have elected to stop asking about pay history.²¹

Second, share the pay or salary range in your job advertisement instead of asking applicants about desired pay. The criminal punishment and reentry systems encourage workers with records to underestimate their value and accept bad pay and working conditions.²² Thus job applicants with records are less likely to demand fair wages. In addition, research demonstrates that Black candidates typically expect lower starting salaries,²³ at least in part because Black and Latinx workers and women are undervalued in the workforce²⁴ and face race- and gender-related negotiating disadvantages.²⁵ U.S. job listings increasingly include salary ranges,²⁶ and some states require employers to provide starting salaries or salary ranges to job applicants.²⁷

Third, allow employees to share pay information—neither formally prohibit nor informally discourage such information sharing. In addition to employees covered by the National Labor Relations Act, this policy should include supervisors because an important part of workplace equity is ensuring advancement opportunities for workers of color and fair pay

for those positions. Enhancing pay transparency will encourage pay equity for people with records and across racial and gender lines.

Fourth, perform regular pay equity audits to identify and then address any systemic differences. Given widespread race- and gender-based pay gaps across the United States, inequities likely exist within most companies. Instead of denying an obvious problem,²⁸ companies should conduct proactive, transparent pay equity audits to help identify and correct unfairness.²⁹

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Endnotes

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