

Fair Chance Hiring for Employers

Part Eight: Ensuring Success, Internally and Externally

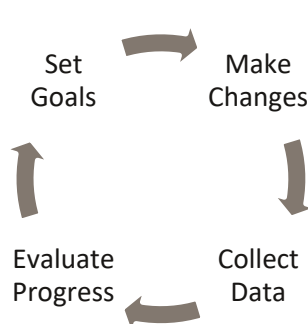
By Beth Avery

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 Eight suggests several ways your company can increase the impact of its internal fair chance hiring policy improvements and encourage more widespread change.

Workers with arrest and conviction records continue to call on employers and policymakers to remove unfair barriers to work. Your team can help ensure its internal changes move the needle by setting goals, collecting data, evaluating outcomes, and identifying additional ways to improve. Moreover, your company can help expand job opportunities for even more workers with records by encouraging the adoption of fair chance policies among other employers and even by lawmakers.

A. Collect data and look for ways to further improve your fair chance hiring process

Parts Two through Seven of [this series of policy briefs](#) lay out numerous, imminently achievable steps your company can take toward expanding job opportunities for people with records. To ensure success, your team should set goals, track changes, collect data, evaluate progress, and then make further changes if needed.



Your team should set tangible interim and long-term goals. Interim goals might include designing and implementing the policy and process changes recommended in this series of policy briefs. After making those initial changes, your team will need to self-evaluate to ensure it can achieve longer-term goals, such as increasing the number of applicants and actual hires with conviction records.¹ Achieving these long-term goals will confirm that internal policy changes are creating their intended benefits for workers with records.

Tracking progress toward longer-term goals will necessitate collecting and analyzing anonymized data about job applicants, their conviction records, and their tenure and advancement within your company. When reviewing these data points, evaluate whether there is a reduction over time in the number of instances in which an applicant is adversely impacted by the results of the background check. Track which types of offenses have led to applicants being denied job opportunities to help determine whether the job-relatedness analysis implemented by your screening staff can be tightened. In addition, look for both an uptick in the number of applicants with records to assess whether your recruiting strategies could be improved as well as an increase in the number of new hires with records to determine whether your evaluation criteria can be made fairer.

In addition to tracking how many people with conviction records are hired, be sure to track the seniority and pay of jobs offered and examine data related to the tenure and advancement of employees with conviction records. As discussed in [Part Three of this series of policy briefs](#), workers with records need and deserve good-paying jobs that both match their skills and offer opportunities for advancement. The challenges faced by workers with conviction records do not cease upon hire. One recent study in California revealed that 37 percent of survey respondents and interviewees reported that “once hired, they were discriminated against in different ways—wage theft, limited promotion opportunities, high risk of termination, and otherwise poor treatment.”²

Your anonymized data collection must include information related to race and ethnicity if it is to be meaningful. Because people with records are disproportionately Black, Latinx, and Indigenous, workers from these racial and ethnic groups are more likely than others to be excluded from good jobs. Bias against workers with records is inseparable from racism, and your data collection must therefore include this demographic information.³

“They were saying, ‘We’re willing to give you a chance.’... It was like, they’re saying one thing, but then they’re doing another.... What are they willing to do to give somebody a chance? They’re saying it, but are they really doing it?... How many people have you hired with a background?”

— *“Nora” reflects on having her job application rejected by a self-proclaimed “second chance” employer*⁴

Be careful not to lose momentum after adopting an internal fair chance hiring policy and making initial changes within your company. If evaluation reveals that your fair chance hiring policy is not impacting hiring decisions and that workers with records continue to be excluded or relegated to dead-end, entry-level jobs, your team should consider making

Collect and evaluate anonymized data related to your fair chance hiring initiative:

- Number of applicants (with and without conviction records) provided a conditional offer;
- Number of applicants provided a notice of preliminary decision to revoke offer because of their record;
- Number of applicants who responded to the notice of preliminary decision with evidence of rehabilitation or mitigating circumstances;
- Number of applicants provided a notice revoking their conditional offer;
- The convictions (offense and years elapsed) based on which conditional offers were rescinded;
- Number of applicants with a conviction record who were hired, broken down by level of responsibility, seniority within the company, and pay;
- Tenure and advancement of employees with conviction records; and
- Demographic information (including race and ethnicity) for all of the above metrics.

additional changes. At that point, take another careful read through [this series of policy briefs](#) to see whether you skipped any steps, and consider partnering with community groups created by and for people with conviction records to help you innovate and identify additional improvements.

B. Encourage other employers as well as your contractors and vendors to embrace fair chance hiring

Messengers matter, and businesses are particularly receptive to hearing about the changes that peer organizations adopt. Therefore, executives and human resources leaders have a distinct opportunity to leverage their individual and collective leadership on this important issue. After your institution has made significant internal changes and embraced the spirit of fair chance hiring, you can share your positive experiences of improving internal policies and of hiring people with records through press releases, media opportunities, case studies, and publications.

Unless vocal, courageous leaders are willing to publicly stand by their decisions to support a more inclusive staff, people with records will continue to have limited opportunities. Businesses must communicate to one another and to the public that they proudly hire people with conviction records.

Your company can also spread the benefits of fair chance hiring by developing a requirement or recommendation for consultants, contractors, and vendors to comply with fair chance hiring laws and align with your firm's practices. Numerous government entities already require their vendors to adopt fair chance hiring practices, including the federal government, which adopted a policy in 2019 requiring civilian agency and defense contractors to delay record inquiries until after a conditional job offer.⁵

Many companies already recognize the importance of contracting with suppliers with equitable hiring practices. For example, General Motors "set up what is regarded as one of the first supplier diversity programs" following racial justice uprisings in Detroit in 1968, "and much of the American auto industry followed suit."⁶ Using your purchasing power to contract with businesses that have adopted fair chance hiring policies is another important step toward supporting workers who have been systematically excluded from the economy. A massive population of people with records, who are disproportionately Black, Latinx, and Indigenous, are locked out of good jobs and careers; their exclusion especially disadvantages families and communities of color.

C. Support worker calls for legal reforms to expand quality job opportunities accessible to people with records

In addition to reforming internal hiring and HR policies, companies can support the calls of workers with records for legal reforms that ease barriers to working in their industries. Policymakers are especially likely to listen when business voices join those of directly impacted workers and advocacy organizations.

"The people closest to the problem are the people closest to the solution, but furthest from resources and power."
— *JustLeadershipUSA founding principle*⁷

When deciding which legal reform campaigns to support, businesses should follow the direction of advocates with records and the organizations that they lead and support. For example, the [Formerly Incarcerated, Convicted People & Families Movement \(FICPFM\)](#) is a network of more than 50 civil and human rights organizations led by people with records

and their family members. Similarly, [JustLeadershipUSA](#) is an organization working to build a nationwide network of directly impacted movement leaders.

NELP's recent recommendations for policy reforms to reduce the impacts of criminalization on workers are [available here](#) on our website.

Legal Requirements Can Get in the Way of Job Opportunities

"When you know you have something in your hand[], and then you open it, and it's not even there—like it was a magic trick." That's how Safer Foundation client "Darryl" describes the experience of having his job offer rescinded because of a requirement in federal law. "They gave me the job. Then it was just 'no.'"

A father of two from the South Side of Chicago, Darryl was offered a position with a large company in January 2020. However, after determining that his background included offenses that made it difficult to employ him without running afoul of federal law, the company rescinded his job offer.

"I was hurt," Darryl says of the day he learned the company wouldn't hire him because of a legal barrier. He had been "excited" to join the company and start a career that he hoped would enable him to support himself and his family. "I was so sad because they hired me. I got my acceptance letter. I still have it. I screenshot[ted] it... If there was a moment [when] I felt like the world was literally against me, it was that moment [the company revoked the job offer]."⁸

Acknowledgements

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Endnotes

- ¹ It's important to ensure workers with *arrest* records aren't denied job opportunities, but the success of your fair chance hiring policies may be more meaningfully evaluated by examining whether many workers with *conviction* records are hired.
- ² Christopher Herring & Sandra Susan Smith, Inst. for Res. on Labor & Emp't, *The Limits of Ban-the-Box Legislation* 7 (2022), <https://irle.berkeley.edu/wp-content/uploads/2022/03/The-Limits-of-Ban-the-Box-Legislation-1.pdf>.
- ³ Please see Parts One and Two of this series of policy briefs for a closer look at how the stigma of a record both results from and reinforces racism.
- ⁴ Telephone interview with "Nora" (Feb. 10, 2021) (transcript on file with author). To maintain worker anonymity, this brief uses a pseudonym and omits the employer's name. Nora applied for jobs with the assistance of the Safer Foundation, a nonprofit social impact organization based in Chicago that focuses on human capital development for people with arrest and conviction records. Visit <https://saferfoundation.org/> to learn more.
- ⁵ See National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 1121 (Fair Chance Act), 133 Stat. 1198, 1605-15 (2019), <https://www.congress.gov/116/plaws/publ92/PLAW-116publ92.pdf>; Nat'l Emp't L. Project, *FAQ: Fair Chance to Compete for Jobs Act of 2019 (S.387/H.R.1076)* (2019), <https://www.nelp.org/publication/faq-fair-chance-to-compete-for-jobs-act-of-2019/> (summarizing relevant portion of the law).
- ⁶ Alexis Bateman, et al., *Why You Need a Supplier-Diversity Program*, Harvard Business Review (Aug. 17, 2020), <https://hbr.org/2020/08/why-you-need-a-supplier-diversity-program> (briefly summarizing the history of supplier diversity programs and describing their benefits).
- ⁷ "About Us," JustLeadershipUSA, <https://jlusha.org/about/> (last visited Aug. 29, 2023).
- ⁸ Safer Foundation interview with "Darryl" (Jan. 25, 2021) (transcript on file with author). To maintain worker anonymity, this brief uses a pseudonym and omits the employer's name.

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