New York City Amends Fair Chance Act Rules

The New York City Commission on Human Rights (NYCCHR) recently amended the rules implementing the city's Fair Chance Act (FCA), which restricts an employer's use of an applicant's or employee's criminal history in hiring and taking adverse employment actions. The amended rules take effect on **Oct. 30, 2026**.

Background

The FCA, which was significantly amended effective 2021, prohibits New York City employers with **four or more employees** from asking about an applicant's criminal history before extending a job offer. After a conditional offer is made, employers may ask whether an applicant has a criminal conviction history or a pending criminal case, check their criminal record and ask about the underlying circumstances of their criminal history.

Employers may not deny work simply because of a criminal record. Instead, employers must first conduct a fair chance analysis to determine whether there is a direct relationship between the applicant's criminal record and the prospective job or whether employing them creates an unreasonable risk to the employer's property or to the safety of specific individuals or the general public.

Amended Rules

The NYCCHR amended its FCA rules to account for the 2021 amendments to the FCA, in addition to other clarifying changes. Key changes to the FCA rules include:

- **Increasing the response window**—Before revoking a conditional offer or taking adverse action, employers must provide the individual at least five days to respond (increased from three days) starting from when they receive both a fair chance notice and a copy of the background check or other inquiry materials. Employers may not permanently fill the position during that window;
- **Expanding protections for current employees and pending cases**—The amended rules add new fair chance protections to current employees and add new protections for people with certain types of cases, including pending criminal cases, unsealed violations, unsealed noncriminal offenses and adjournments in contemplation of dismissal;
- **Removing the early resolution process**—The amended rules remove the early resolution process for NYCCHR-initiated complaints. The early

Highlights

Oct. 30, 2026

The amended rules implementing the FCA take effect. The amended rules account for the 2021 amendments to the FCA and provide additional clarifying changes.

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resolution process provided an expedited settlement option to employers in circumstances that allowed them to immediately admit liability and comply with a penalty in lieu of litigating the matter.

- **Identifying per se violations**—The amended rules also clarify with more specificity what is considered a per se violation of the FCA, including:
    - The use of forms or applications that contain certain language related to criminal history; and
    - The individualized fair chance analysis requirement is not fulfilled if:
        - An employer fails to consider timely provided additional information after the employer has shared its analysis before taking an adverse action based on the employee's criminal history; or
        - An employer fails to conduct a new fair chance employment analysis when an employee or applicant identifies an error in their criminal history that is material to the analysis, including but not limited to the inclusion of an incorrect disposition or erroneous inclusion of a pending case or conviction, before taking an adverse action;
- **Clarifying the fair chance employment factors**—The amended rules clarify the fair chance employment factors that must be considered before making an employment decision based on an applicant's or employee's criminal history (including pending cases). The factors include:
    - The city's policy to overcome stigma and unnecessary exclusion of persons with criminal justice involvement in employment;
    - The specific duties and responsibilities necessarily related to the employment;
    - The bearing of the criminal offense or offenses on the individual's fitness or ability to perform one or more such duties or responsibilities;
    - Whether the individual was 25 years or younger at the time of the criminal offense or offenses;
    - The seriousness of the offense or offenses;
    - The legitimate interest of the employer in protecting property and the safety and welfare of specific individuals or the general public; and
    - Any additional information provided by the individual, or on their behalf, in regard to their rehabilitation or good conduct, including history of positive performance and conduct on the job or in the community or any other evidence of good conduct;
- **Clarifying the use of leave**—Under the amended rules, while conducting the fair chance employment process for a pending case or a conviction that occurred during employment, the employee may be placed on paid or unpaid leave for a reasonable time. There is a rebuttable presumption that a reasonable time will not exceed five business days.

Employer Takeaways

Although the amended rules generally reflect changes already amended under the 2021 statutory changes, covered New York City employers should review the amended FCA rules and determine whether any updates are needed to existing hiring practices and policies.