



OPENING DOORS

An Employer Guide to Legal Considerations in Second Chance Employment

The Second Chance Business Coalition (SCBC) developed this guide to provide a foundational understanding of legal considerations for companies as they accelerate their second chance employment efforts.

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A Guide for Decision Makers

This guide seeks to equip talent management and human resources (HR) professionals with an introductory understanding of key legal considerations and resources to support their second chance employment efforts. While this guide does not provide an exhaustive overview of all legal and regulatory considerations, it seeks to provide practical information, leading practices and in-depth discussion of key issues. Corporate professionals can use this guide to bolster their knowledge and prepare themselves for internal discussions to support inclusive and equitable employment practices.

As more employers adopt second chance employment practices, the legal and regulatory issues involved will continue to evolve. Like its member companies, the SCBC will continue to develop and share its expanding knowledge base. In many ways, the normalization of second chances has just begun, so it is critical that those with experience share their lessons with those who are coming on board. We encourage employers of all sizes to find the solutions that work for them.

About the Second Chance Business Coalition

The Second Chance Business Coalition (SCBC) represents a cross-sector coalition of large, private-sector employers committed to expanding second chance hiring and advancement practices within their companies.

Founded in April 2021, the SCBC promotes the benefits of second chance employment and provides employers with resources to recruit, hire and provide career advancement to people with a criminal record.

For more information about the SCBC and its partners, visit secondchancebusinesscoalition.org.

Introduction

Many employers are working to eliminate barriers to employment and career advancement for individuals with criminal records. This guide focuses on the initial stages of the employment life cycle, including attracting, recruiting and onboarding talented individuals who have a criminal record.

Note: The information provided in this guide does not, and is not intended to, constitute legal advice. All information, content and materials available in the guide are for general informational purposes only. Readers of this guide should contact and consult with legal counsel to obtain advice with respect to any particular legal matter regarding their employment practices. Use of this guide does not create an attorney-client relationship between the reader and guide authors, contributors or their employers. Each Second Chance Business Coalition member is responsible for establishing its own employment practices and policies, including whether and the extent to which it will expand its second chance hiring and advancement practices.

Early Stages of the Employment Life Cycle

Talent Attraction

Application

Companies are encouraged to develop and review job descriptions before the employment life cycle begins. When creating and revising job descriptions, here are some key considerations for language, formatting and accessibility:

- **Identify and revise job descriptions by incorporating essential job requirements using a skills-first approach.**
 - **Resource:** The Business Roundtable [Multiple Pathways Initiative Talent Acquisition Working Group](#) focuses on identifying best practices and supporting companies in implementing skills-based hiring practices.
 - **Resource:** The Society of Human Resource Management (SHRM) Foundation's [Skilled Credentials at Work](#) initiative provides research, a toolkit and a step-by-step action planner for employers seeking to implement skills-based employment strategies.
- **Share the company's commitment to second chance employment by including a statement in job postings. Examples include the following¹:**
 - **Resource:** [Company Name] is an equal opportunity and second chance employer and provides opportunities to all employees and applicants for employment. [Continue the statement with your company voice and position on equal employment opportunity, etc.²]
 - **Resource:** Examples from Eaton and Indeed.

Financial Analyst, FP&A

Indeed (part of Recruit Holdings, Co., Ltd.)
★★★★☆ 1,409 reviews
United States
\$62,000.00 - \$92,000.00 a year - Full-time

[Apply now](#) [Bookmark](#) [Close](#)

individuals with disabilities in the employment application process. To request an accommodation, please contact Talent Attraction Accommodations at 1-855-567-7767, or by email at accommodations@indeed.com. If you are requesting accommodation for an interview, please reach out at least one week in advance of your interview.

Fair Chance Hiring
We value diverse experiences, including those who have had prior contact with the criminal legal system. We are committed to providing individuals with criminal records, including formerly incarcerated individuals, a fair chance at employment.

Early Talent Program Manager

Eaton (5,247 reviews)
Beachwood, OH 44122 • Remote
\$116,250.03 - \$170,500.05 a year
You must create an Indeed account before continuing to the company website to apply

[Apply on company site](#) [Bookmark](#) [Close](#)

review of processes for continuous improvement.

- 25% travel is required.

We are committed to ensuring equal employment opportunities for all job applicants and employees. Employment decisions are based upon job-related reasons regardless of an applicant's race, color, religion, sex, sexual orientation, gender identity, age, national origin, disability, marital status, genetic information, protected veteran status, or any other status protected by law.

Eaton considers qualified applicants regardless of criminal histories, consistent with local laws. To request a disability-related reasonable

For future employees, the job application begins the employment life cycle; it signals a job candidate's interest and triggers recruitment, assessment and employment. When carefully crafted, job application forms can allow employers the ability to withstand legal challenges to the appropriateness of their hiring decisions and provide a way for candidates to identify their relevant skills and introduce themselves to employers.³

Talent Recruitment

Individualized Assessments

An individualized assessment is a process that allows a candidate to provide context and evidence that a past conviction is unrelated to their ability to perform the job they seek.⁶ This practice helps employers determine whether a criminal record has a direct bearing on the requirements of the position.⁷

To initiate individualized assessments, employers should consider these steps:

- Follow a clear and documented process for the background screening.
- Document the results of background screenings, including the decision to advance or decline a candidate, along with the rationale behind that decision.⁸
- Refer to the *Deeper Dive Guidance on [Individualized Assessments](#)*.

Background Screening

Employers use background screening to mitigate potential legal liability associated with negligent hiring and retention to protect the company and its stakeholders' interests. Depending on the sector or industry, companies may be required to conduct background checks for certain occupations.

Companies often cite these reasons for using background screening:

- To ensure safety in the workplace;
- To make sure the right employees are hired for the job;
- To avoid potential legal liability for negligent hiring and retention; and
- To protect company property.

While these are critical concerns for all companies, it is equally important to understand that these concerns should not create a barrier to a robust and equitable talent recruitment process.⁹ Observations of large data sets show that most individuals with a conviction do not have a subsequent conviction.¹⁰

Furthermore, second chance employees generally perform at the same levels with complimentary attrition rates as their peers and experience high promotion rates.¹¹

To further improve the integrity of a second chance program, it is recommended that companies:

- Develop a clear and documented process outlining when a background screening is necessary and for which roles.
- Clarify who is responsible for establishing, evaluating and determining the background screening policies, practices and procedures.
- Consider working with HR, legal and executive leadership to clarify background screening policies and practices for internal positions.
 - **Exemplar Company:** [JPMorgan Chase](#), a global financial institution, has a well-documented background screening process that is especially stringent for positions related to finance, risk management and compliance. They have established guidelines that specify when background screening is required, the types of checks to be conducted and the considerations for evaluating candidates' backgrounds.

See *Deeper Dive Guidance on [Background Screening, Industry-Specific Considerations and Resources](#) and [Discussing Background Screening Results With Job Candidates](#)*.

Talent Onboarding

Employee Confidentiality

Employee confidentiality is paramount to the success of HR policies and practices, particularly when working with people who have a criminal record. Limiting access to personal identifiable information (PII) must be planned for and regularly reviewed to ensure compliant practices.

Employers seeking to expand second chance employment should consider the following:

- Implement secure data storage systems, restrict access to employees' personnel files and safeguard background check reports.
 - Train talent decision makers so that they are fully aware of their confidentiality obligations, including data privacy laws and violation reporting.
 - Leverage trusted technology to manage data and track compliance to reduce the risk of errors.¹²
-

Leading Practices & Top-Line Considerations

The following second chance hiring practices have proven effective for many SCBC member companies in the development and continuous improvement of their second chance employment programs. Employers can mitigate risks by establishing an internal core team or review committee and providing training for individuals involved in employment-related decisions.

Internal Core Team & Review Committee

- Companies that adopt and embrace second chance employment often find value in establishing a core team of individuals to develop, measure and implement their second chance employment efforts.¹³ A core team may include these roles: chief HR officer, legal counsel, compliance officer and HR leader focused on second chance employment. Alternatively, consider establishing a task force within an existing in-house compliance committee.¹⁴

When establishing the core team, leaders should consider:

- Partnering with third-party organizations, such as non-profits, advocacy organizations, consultants or legal organizations, with relevant knowledge and expertise in both second chance employment internal review committees and reviewing second chance employment processes;
- Ensuring that selected working group members demonstrate the ability to think critically and neutrally about the effect of structures and policies on the company's justice-impacted talent, acknowledging and mitigating biases wherever possible; and
- Centralizing and evaluating the process and person/role responsible for making final decisions about a job candidate with a criminal background and their conviction(s).

Training for Talent Decision Makers

Federal, state and local laws and regulations are subject to change over time, often altering previous hiring practices. To ensure compliance, training for talent decision makers and staying on top of changes are essential.¹⁵

Leaders of second chance employment efforts will benefit from:

- Internal training, modeling and accountability for adopting and measuring all second chance employment efforts for recruiters, hiring managers and other roles responsible for talent acquisition;
 - Partnering with external experts who have relevant training expertise and programs to support the understanding and adoption of second chance employment; and
 - Adopting and cultivating an internal team and ongoing training to ensure that second chance employment efforts and effectiveness are continuously evaluated and improved. See *Deeper Dive Guidance on [Training for Talent Decision Makers](#)*.
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Deeper Dive Guidance

Job Descriptions

The job description is one of the most critical components of the talent acquisition process and should be carefully crafted with the following considerations:

- Define the core competencies and skills required for the role, plus the necessary qualifications for job performance. Provide a clear, detailed account of the essential job functions, avoiding unnecessary jargon.
 - **Resource:** Business Roundtable, Lightcast and the Burning Glass Institute – [A Guide to Improving Recruitment, Retention, Advancement and Equity](#).
 - **Resource:** Jobs for the Future – [Skills Based Practices: A Journey Map for Employers](#).
 - **Resource:** The [Skillful Job Posting Generator](#) allows employers to write skills-first job descriptions easily and quickly for over 1,000 roles.
- Utilize asset-based language, or language focusing on strengths, skills and potential, to help develop a compelling and inclusive job description. Using person-first language and understanding how language can impact candidates demonstrates a commitment to fostering an inclusive workplace and hiring process. It is important to avoid generic terminology or language that might inadvertently disqualify candidates with certain backgrounds or experiences.
 - **Resource:** Jobs for the Future – [Language Matters Guide](#).
- Refrain from using language related to background checks.
- Be transparent about benefits, including compensation, and outline the hiring process and timeline to maintain candidate engagement and enthusiasm.
- Allow candidates to gain insights into your company through a company overview that includes your mission, values and culture.¹⁶

The job description serves as a bridge between your organization and potential candidates, making its precise crafting imperative. By adhering to these elements and considerations, employers not only attract qualified candidates but also foster inclusivity, equity and transparency, ultimately leading to more successful hiring outcomes.

Skills-Based Hiring

Skills-based talent practices involve organizing all talent acquisition and development activities around objectively defined, critical job skills. This approach deviates from the traditional reliance on proxy

signals of skills, such as degree requirements or defined years of required experience in a specific job role. Skills-based talent practices are increasingly offering solutions to employers' need for capable, highly-skilled workers, while reducing any entrenched patterns of limited access to economic opportunity. Moreover, adopting skills-based talent practices can be transformative, expanding how companies recruit, assess and hire candidates, and thereby open new pathways to careers for justice-impacted talent.

Companies that focus on employee skills evaluate individuals based on their abilities and transition the most highly-skilled employees to new roles that better match their capabilities. This shift benefits both employees and employers: Employees gain access to new opportunities and career trajectories, while employers can boost retention rates and foster the development of critical skills for the future.

Consider adopting the following skills-based talent practices:

- Include partnerships and strategies honoring both traditional post-secondary institutions and non-traditional training providers that award short-term credentials or certificates.
 - Reduce bias in hiring and advancement by implementing comprehensive anti-bias training at all stages of the skills-based talent journey. Companies can also invest in systems to assess, track and cultivate objectively defined job-related skills.
 - Center on job quality, longevity and adaptability to improve the likelihood of success.
 - Improve racial equity, job quality and equitable economic advancement for workers. Companies committed to these outcomes should continue investing in diversity, equity and inclusion as well as job quality initiatives.
- **Resource:** SHRM Foundation – [Skilled Credentials at Work Toolkit](#).
 - **Resource:** Business Roundtable, Lightcast and the Burning Glass Institute – [A Guide to Improving Recruitment, Retention, Advancement and Equity](#).
 - **Resource:** Business Roundtable – [The Multiple Pathways Initiative Talent Acquisition Working Group – Emerging Actions and Company Success Stories](#).

Second chance employers routinely assess job candidates on their ability and capacity through the following methods:

- Clearly defining the key job requirements, including the specific skills, knowledge, experience and qualities needed to excel in the role, to serve as the foundation for assessing candidates effectively.
- Developing a structured interview process, including a consistent and structured interview format that covers essential job requirements.
- Preparing a set of competency-based questions that align with the specific skills and qualities necessary for success in the role.

Background Screening

To effectively utilize background screenings¹⁷, a company should first identify the specific convictions that require further review for job eligibility at the company or for a specific role. Consider working with external partners and experts to help you provide a neutral assessment of company policy, refine the implementation of policies, and establish a clear matrix as guidance for background screening evaluations and decision making. A matrix should provide direction for when convictions will typically pass the background screening process or be subject to further review.

Equal Employment Opportunity Commission Guidance

Title VII of the Civil Rights Act prohibits employment discrimination based on race, sex, color, religion and national origin, also known as protected classes. This includes prohibiting employers from treating similarly situated job applicants or employees with the same criminal records differently because of their race, national origin or another protected characteristic, which is often referred to as disparate treatment discrimination.¹⁸

In addition, Title VII prohibits disparate impact discrimination. For example, an employer's recruitment policy or practice may appear to be neutral (e.g., excluding all applicants from employment based on certain criminal conduct), but if the policy or practice disproportionately excludes people of a particular race or other individuals protected under Title VII, it may violate the Title VII if the policy is not "job related and consistent with business necessity."¹⁹

In *Green v. Missouri Pacific Railroad*, the court identified three factors to use as the starting point for assessing whether a person's criminal conduct may be linked to a particular job position. Specifically, the *Green* case effectively set the "job-related and consistent with business necessity" standard for when employers conduct an individualized assessment.²⁰

The Green factors include:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense or conduct and/or completion of the sentence; and
- The nature of the job held or sought.²¹

The U.S. Equal Employment Opportunity Commission (EEOC), which enforces Title VII, issued guidance which can assist employers with understanding the *Green* factors and Title VII requirements and implementing individualized assessments of job candidates with conviction histories.²²

Employers should be aware that state and local laws or regulations may be preempted by Title VII if they "purport to require or permit the doing of any act which would be an unlawful employment practice" under the statute.²³ A state or local law or regulation may provide greater protection to individuals than the protections provided under Title VII.

Federal Contracting

Since 2021, covered federal contractors must comply with the federal Fair Chance Act, which prohibits contractors from asking about a job applicant's criminal background in the initial stages of the application process.²⁴

The law includes screening criteria that are consistent with the Green factors. Employers may consider:

- The nature of the position for which the person is applying or in which the person is employed;
- The nature and seriousness of the conduct;
- The circumstances surrounding the conduct;
- The recency of the conduct;
- The age of the person involved at the time of the conduct;
- Any contributing societal conditions; and
- The absence or presence of rehabilitation or efforts toward rehabilitation.

In general, the U.S. Office of Personnel Management, which serves as the chief HR agency and personnel policy manager for the federal government, requires federal agencies and departments to consider hiring justice-impacted talent if they are the best candidate for the position and can comply with relevant job requirements.

Discussing Background Screening Results With Job Candidates

Employers should approach the discussion of background results carefully. As a starting point, employers can provide the background screening results to the job candidate and ask if they are accurate. Once the candidate confirms screening results (or shares context for review), a trained HR team member should conduct a follow-up conversation with the job candidate. This discussion is to ensure that the candidate is still the best fit for the role offered and confirm that their criminal background does not directly affect the performance of the role.

Below are some examples of appropriate questions to ask. It is important to ensure that the questions selected are relevant to the role and provide relevant information to inform a final objective decision.

- Tell me about this time in your life and the basic nature of this conviction(s).
 - **Listen for:** Relevant factors, which are largely up for interpretation. Each company should determine what is truly relevant for the role, how to document this decision, whether it is consistent with other employment decisions of the same type and the likelihood that this decision would be upheld in court.
- What would you like me to know about these circumstances as we complete your individualized assessment?
 - **Listen for:** Accountability, which could be reflected in several ways, as social and environmental factors play a strong role in sentencing, convictions and length of incarceration and/or community supervision.
- How have you spent your time since this conviction(s)? How did you prepare to return to the workforce? Did you complete any programs or certificates?
 - **Listen for:** Constructive use of time, which could be reflected in many ways, as access to programs and resources vary widely within prisons, jails and community services. Their answer may include program completion, volunteer work, vocational training, employment, reading, education programs and course work. [This question allows candidates to highlight any positive activities they have pursued post-conviction, demonstrating a commitment to personal growth, skill development or community engagement.]

When background screening is complete for candidate evaluation, the Fair Credit Reporting Act requires that companies securely safeguard the report and its information consistent with the law's recordkeeping requirements. If a candidate is not hired, that could mean retaining the report securely for up to five years.

A [2023 report](#) from the Legal Action Center and National Workrights Institute found that when making hiring decisions, employers that conduct background checks and evaluate the results are rarely held liable for negligent hiring. For the vast majority of office and factory jobs that are open to talent with records, negligent hiring liability "is virtually non-existent."²⁵

Individualized Assessments

Conducting an individualized assessment for each job candidate is fundamental to a company's second chance employment efforts and compliance success.

Many factors may be considered when completing an individualized assessment. A company's internal review committee can determine the validity and usefulness of a job candidate's answers to specified follow-up questions. For instance, if a candidate is asked how old they were when they received a conviction, how will the company use that information?

Consider these factors:

- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- The age at the time of conviction or release from prison;
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense or conduct;
- Rehabilitation efforts, e.g., education or training; and
- Employment or character references and any other information about fitness for the position.

Training for Talent Decision Makers

Talent decision makers play a pivotal role in shaping an organization's workforce and, as such, they benefit from intentional training in key areas regarding inclusive hiring practices. Companies can make significant strides in promoting equitable advancement by aligning decision makers with the company's values and practices regarding second chance hiring and advancement policies.

This comprehensive approach extends beyond the technical aspects of hiring to encompass areas such as ethics, integrity and equity. Potential topics to cover in training include:

- Equipping decision makers with standard operating procedures (SOPs) designed to minimize subjectivity during decision-making. These SOPs can provide a structured framework that leaves little-to-no room for biases and ensures that decisions are consistent and fair.
- Information on federal, state and local employment requirements, including "ban-the-box," to ensure that decision makers are familiar with applicable laws and regulations.
- Using welcoming and inclusive communication to strengthen a company's culture and enhance its reputation among the workforce and the wider public.
- Conducting individual assessments that consider each candidate's unique background and circumstances. See *Deeper Dive Guidance on [Individualized Assessments](#)*.
- Providing appropriate disclosures and obtaining written consent for background checks and ensuring transparency in the hiring process.
- Maintaining the highest privacy and security standards for handling applicant data.
- Establishing mechanisms for ongoing compliance monitoring, including regular audits, documentation and feedback loops, to ensure the hiring process aligns with the organization's goals of inclusivity and fairness.

Appendix

Industry-Specific Considerations and Resources

Below are additional resources to gain a deeper understanding of industry-specific considerations.

General Resources

- EEOC – [Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act](#)
- Restoration of Rights Project – [50-State Comparison: Limits on Use of Criminal Record in Employment, Licensing & Housing](#)
- National Workrights Institute, Best Practice Standards – [The Proper Use of Criminal Records in Hiring](#)

Aerospace

- The Federal Aviation Administration – [Employment & Labor Law Overview](#)
- The Aerospace Industries Association – [Workforce Issues & Advocacy Resources](#)
- The National Council of Examiners for Engineering and Surveying – [Licensure Exchange](#)

Commercial Truck Driving

- The Federal Motor Carrier Safety Administration – [State Overview](#), including cross-state disqualifications
- The Federal Motor Carrier Safety Administration – [Guidance on CDL Licensing](#)
- The Truck Driver Institute – [What Felonies Disqualify You From Getting A CDL](#)
- The North American Trucking Association – [Where the U.S. Currently Stands on Ban the Box Laws](#)
- Women in Trucking – [Can Felons Get a CDL?](#)

Financial Services

- The Federal Deposit Insurance Corporation – [FDIC Final Rule Revises and Codifies Policy to Allow Greater Employment Opportunities for Individuals with Certain Minor Criminal Offenses on Their Records](#)
- SHRM – [Hiring Restrictions Loosened for Banks](#)
- The National Employment Law Project – [Fair Chance Hiring in Financial Services: A Step-by-Step Guide to Hiring Workers with Arrest and Conviction Records in the Financial Services Industry](#)

Healthcare

- The National Employment Law Project – [A Healthcare Employer Guide to Hiring People with Arrest and Conviction Records](#)
- U.S. Department of Health and Human Services – [Linking People with Criminal Records to Employment in the Healthcare Sector: 5 Things to Consider](#)
- U.S. Department of Education – [Health Care Opportunities For People With Criminal Records](#)

Insurance

- The National Association of Insurance Commissioners – [State Licensing Handbook](#)

Acknowledgments

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Footnotes

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