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California Community Colleges Fair Chance Hiring Policy Guidance Frequently Asked Questions for Community College Students

The following FAQs were developed for community college students with an arrest or conviction record to learn about their rights and responsibilities when seeking employment with a local California community college. Paving the way for California's higher education system to expand employment opportunities for people with arrest and conviction records, the California Community Colleges Chancellor's Office recently issued a "fair chance hiring best practices" [policy guidance](#), as well as a legal advisory ([Office of General Counsel Advisory 2018-04](#)) that detailed the laws regulating the use of criminal history records in hiring, promotion and retention decisions by the community colleges and districts.

1. What is "fair chance hiring?"

"Fair chance hiring" refers to a range of laws and hiring practices that seek to ensure that qualified job applicants with an arrest or conviction record are able to compete fairly for employment. As described by the Chancellor's new policies, the basic goal of fair chance hiring is to establish a hiring process that takes into account all the positive skills and experience that each job applicant brings to the position, rather than automatically rejecting an applicant based solely on his or her criminal record.

2. What laws apply to the hiring of people with an arrest or conviction record by a California community college?

As the Chancellor's legal advisory explains, the California community colleges are required to comply with the following employment laws that regulate the process of hiring people with arrest and conviction records.

- **Civil Rights Laws:** Title VII of the Civil Rights Act of 1964 is a federal law and prohibits discrimination against people of color and other protected groups. Because criminal background checks for employment disproportionately impact people of color, Title VII requires employers to conduct an "individualized assessment" of each job applicant taking into account the age of the offense, the nature of the offense, and the relationship of the offense to the specific position.
- **The "Ban the Box" Law:** California's "ban the box" law, which is called the "Fair Chance Act," requires certain employers to wait until the end of the hiring process to conduct a criminal background check rather than asking the criminal history question on the job application. It still permits employers to ask the question; they simply must wait until a conditional offer of employment is made before they run a background check or ask the question. The law also requires employers to consider evidence of rehabilitation. As described below, the Fair Chance Act/"ban the box" law applies to some community college jobs, but not all.
- **Education Laws:** California's Education laws regulate the state's community college system and include certain restrictions that limit hiring of people with records. Most importantly, the community colleges are restricted from hiring people convicted of drug and sex offenses for academic and most other staff positions. However, the law also requires the community colleges to determine if the applicant has been rehabilitated if the drug or sex offense is more than five years old.

3. Are students treated differently under the laws compared to non-students seeking employment with a local community college?

Yes, most students with a conviction record seeking employment with a community college have far more legal rights than non-students. Specifically, the Education law that restricts hiring people with drug or sex convictions does not apply to students seeking non-instructional positions (including most work-study positions). In addition, most students seeking non-instructional positions are entitled to all the protections of the state “ban the box” law described below. However, the law does not apply to non-students seeking academic and most other staff positions. Also, it is important to emphasize that the community colleges may still deny a non-instructional position to a student with a conviction record provided they first determine that the student’s offense is directly related to the job and consider evidence of rehabilitation, as required by the “ban the box” law.

4. What steps are the local community colleges required to take when considering hiring students for non-instructional positions who have an arrest or conviction record?

As described above, the Chancellor’s legal opinion clarifies that California’s “ban the box” law applies to students seeking non-instructional positions with a community college, but not to non-students seeking employment with the community college system. Specifically, the “ban the box” law requires the community colleges to follow each of these five steps before denying a job to a student with a conviction record for a non-instructional position:

- **Step 1:** The community college may not ask about a student’s criminal record on the job application. Instead, it must wait until the end of the hiring process (called the “conditional offer or employment”) before it conducts a criminal background check or asks about the applicant’s record.
- **Step 2:** After the background check is conducted, the community college must find that the student’s conviction is directly related to “successful performance on the job,” taking into account the duties of the job, the level of supervision and other factors. In making this determination, the community college may not consider the applicant’s arrests, juvenile adjudications, or dismissed, sealed and expunged records.
- **Step 3:** If the criminal record is found to be job-related, the community college must provide a “preliminary notice” to the student taking back the job offer. The community college must include a copy of the rap sheet in the notice provided to the student and describe the applicant’s rights to challenge the accuracy of the record and produce evidence of rehabilitation. (Applicants should carefully review the rap sheet and seek legal assistance if necessary to challenge its accuracy. Also, while the community college is not permitted to consider certain records as noted in Step 2, the LiveScan rap sheet may include this information.).
- **Step 4:** The community college must next evaluate the evidence of rehabilitation provided by the student (as described in more detail below) and any information provided by the student showing that the criminal history report relied on by the community college is actually inaccurate or incomplete.
- **Step 5:** After the community college has considered all the information provided by the student, it must issue a “final notice” to the student, either hiring or not hiring the applicant for the job. In addition, the final notice must include information describing the student’s right to file a [complaint](#) with the state civil rights agency (the California [Department of Fair Employment and Housing, or DFEH](#)) challenging the community college’s final determination.

5. Are the local community colleges required to consider evidence of rehabilitation submitted by a student with a conviction record seeking employment?

Yes, as described in Step 4 above, the community college must consider evidence of rehabilitation for students

applying for a non-instructional position, even when the individual's conviction is found to be directly related to the job. This is a critically important process for students with conviction records to take advantage of because it allows them to demonstrate all they have done to pursue an education and turn their lives around. Students should assemble and submit all relevant information to help document evidence of rehabilitation, including:

- The age of the student when the offense was committed, and the period of time that has passed since the offense.
- Evidence of work history, especially any training or work experience related to the position.
- Completion of, or active participation in, rehabilitative drug or alcohol treatment.
- Additional evidence of educational, training or work activities, including activities that took place during any period of incarceration.
- Letters of reference from people who knew the student either during a period of incarceration or since the student was released from a correctional institution, including previous work supervisors, faculty, probation officers, and parole agents.
- Additional references, including character statements from community members, clergy and others who can speak to the student's rehabilitation and involvement in community activities.

6. What steps should students take if they believe a community college has violated their rights?

A community college may be violating the "ban the box" law if it doesn't follow the specific steps and provide the specific notices described in Question 4 (keep in mind that it depends on what type of job the student is seeking if the "ban the box" law applies.). Thus, students seeking employment with a community college should keep an accurate record of all their documents and communications related to the hiring process. If a student believes the community college has not complied with the law, it can be helpful to share the DFEH [summary](#) of the law to provide the college with an opportunity to explain its decision and/or correct the situation. If necessary, the student may also file a [complaint](#) with DFEH alleging a violation of the law.

7. Are there any positions where the community colleges are not required to comply with the protections of the "ban the box" law?

Yes, there are some positions where the community colleges do not have to follow the requirements of the "ban the box" law, including instructional positions (e.g., teaching assistant) and employment with a child care center on campus. When applying for instructional positions specifically, students are treated like other workers, which means that they can be automatically disqualified if they have been convicted of a drug or sex offense unless the offense occurred more than five years ago and the individual can demonstrate that he or she has been rehabilitated.

8. Are there other actions that the California Community College Chancellor's Office recommends the local community colleges take to promote a fair chance hiring culture on campus?

Yes, what's described above are just the minimum steps that the community colleges should take when students with arrest or conviction records are being considered for employment. The Chancellor's [legal advisory](#) and [policy guidance](#) includes additional recommendations for the community colleges to follow to fully embrace a culture of fair chance hiring on campus:

- The leadership of the community college should communicate and publicize the core goals and vision of fair chance hiring to the campus community.
- The community college should forge partnerships with directly-impacted students and community members, and adopt humanizing language in their communications and policies to destigmatize people with criminal records.
- The community college should make critical investments in people with criminal records and promote employment opportunities at all levels of responsibility.

- The community college should leverage its contracts with vendors and other relationships to create employment opportunities for people with criminal records.