

## California Community Colleges Fair Chance Hiring Policy Summary

On February 8<sup>th</sup>, the California Community Colleges Chancellor issued guidance on Fair Chance Hiring Best Practices ([Policy Guidance](#)) following the December 2018 Chancellor's legal advisory ([Office of General Counsel Advisory 2018-04](#)) regarding the use of criminal history records in hiring, promotion and retention decisions by the community colleges and districts. The policy guidance and legal advisory together pave the way for California's higher education system to expand employment opportunities for people with arrest and conviction records.

### Key Legal Findings

- The community colleges and districts retain broad discretion to make employment decisions based on criminal history information informed by an individualized assessment.
- The laws recognize that these are complex decisions balancing campus safety and security with the goals of ensuring diversity, equity and an expanded pool of qualified applicants.
- Students seeking most work-study and non-instructional positions are not subject to the Education Code's restrictions against hiring people with sex and drug offenses. Colleges and districts must delay asking about a student's criminal record until a conditional offer is made.
- The Education Code limits hiring of faculty and staff with sex and drug offenses (not other specific offenses), but also requires consideration of evidence of rehabilitation.
- All applicants must be given a copy of their criminal record if the decision not to hire is based upon it.

### Best Practice (5-Step Process)

- Step 1: Delay the background check until the conditional offer of employment ("ban the box"). Rely on state Department of Justice (DOJ) records and do not require the applicant to self-disclose.
- Step 2: Narrowly tailor any disqualifications to job-related offenses.
  - The offense should specifically bear a "demonstrable relationship" to "successful performance on the job," taking into account job duties, level of supervision and other factors.
  - Limit consideration to relevant convictions not older than 7 years from the date of conviction (or 5 years from release from incarceration), and do not consider arrests, juvenile adjudications, or dismissed, sealed or expunged records.
- Step 3: If the criminal record is job-related, provide a preliminary notice to the applicant revoking the job offer, which includes a copy of the record and a description of the applicant's rights to challenge the accuracy of the record and produce evidence of rehabilitation within 14 days.
- Step 4: Conduct an individualized assessment evaluating the applicant's evidence of rehabilitation and any disputes regarding the accuracy of the record. Be careful not to consider records identified in Step 2, even if the LiveScan rap sheet includes them.
  - Consider a broad range of rehabilitation factors, including programming in prison. A formal state-issued "certificate of rehabilitation" is not to be required.
  - The Education Code restrictions against hiring faculty and staff with sex or drug offenses require consideration of rehabilitation if five years have passed since the offense took place.
- Step 5: Provide final notice either reinstating the conditional offer based on Step 4, or explaining the final determination to revoke the offer.

### Additional Best Practices

- Maintain strict confidentiality of criminal history records as required by DOJ.
- Adopt recommended policies designed to assist community college and district leaders, administrators and staff to embrace an inclusive campus culture of fair chance hiring.