

## Conviction Record Protection - Frequently Asked Questions

### General Information

#### **1. How does the Illinois Human Rights Act protect a person who has a conviction record?**

The Illinois Human Rights Act protects a person from being discharged, disciplined, denied employment, or denied promotions, because of a conviction record without notice and an interactive assessment of whether there is a substantial relationship between the conviction and the job. A person who believes they have been discriminated against based on a conviction record may file a charge with the Illinois Department of Human Rights. For more information on how to file a charge of discrimination, see Question 26.

#### **2. What does it mean to have a conviction record under the Illinois Human Rights Act?**

Under the Illinois Human Rights Act, a conviction record includes, but is not limited to information showing that a person has been convicted of a felony, misdemeanor or other crime, placed on probation, fined, imprisoned or paroled by any law enforcement agency or military authority.

#### **3. What are some examples of a conviction record?**

Some examples of a conviction record are guilty pleas or court orders that show a person was convicted of any felonies, misdemeanors or other criminal offenses.

#### **4. When does the conviction record amendment to the Illinois Human Rights Act become effective?**

This amendment is effective immediately upon signature into law. The Governor signed on Tuesday, March 23<sup>rd</sup>, 2021.

### Employer Questions

#### **5. Can an employer maintain a policy that bars all persons with conviction records from employment?**

No. An employer may not maintain a policy that bars all persons with a conviction record from employment. An employer is required to take certain steps to determine how the conviction relates to the employment sought or held before they can bar an employee or applicant from employment. However, please note that some laws prohibit employers from hiring persons with specific conviction records. In those instances, the employer must notify the employee or applicant of their employment

disqualification pursuant to law. The employee then has at least five business days to respond where the employee can dispute the accuracy of the relevant conviction record law disqualifying their employment.

**6. Can an employer discharge an employee based on a conviction record?**

It depends. An employer may discharge an employee based on a conviction record, but only if certain circumstances are present. First, an employee can be discharged if there is a substantial relationship between the conviction record and the position the employee holds. Second, an employee can be discharged if their continued employment poses an unreasonable risk to the property or the safety or welfare of the employer and its employees. Before discharging the employee, an employer must also notify the employee of the preliminary determination and allow the employee to explain the circumstances of the conviction and whether the conviction should be considered in the decision to discharge.

**7. What does it mean to show that a conviction record is “substantially related” to employment?**

Showing that a conviction record is “substantially related” to employment means that an employer can demonstrate that the position in question creates an opportunity for the employee to engage in the same or a similar criminal offense. In addition, it means that an employer can show that the circumstances leading to the conduct for which the person was convicted will also occur in the employment position.

**8. What does it mean to show that a conviction record poses an “unreasonable risk to property or the safety or welfare of individuals”?**

Showing that a conviction record poses an “unreasonable risk” means that before making a decision to bar employment, an employer must assess the risk that the employee poses to the workplace in the particular position and determine whether the risk is unreasonable under the circumstances. In doing so, the employer is required to consider factors such as the severity of the offense, the length of time since the offense occurred, evidence of rehabilitation, and the likelihood of reoccurrence of the same or similar offenses at the employer.

**9. Prior to making a preliminary decision denying employment based on a conviction record, what steps is an employer required to take?**

An employer is required to determine whether there is a “substantial relationship” between one or more of the previous criminal offenses and the employment sought; or if the granting of employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. In doing so, the employer must consider the following mitigating factors:

- (1) the length of time since the conviction;
- (2) the number of convictions that appear on the conviction record;
- (3) the nature and severity of the conviction and its relationship to the safety and security of others;
- (4) the facts or circumstances surrounding the conviction;
- (5) the age of the employee at the time of the conviction; and
- (6) evidence of rehabilitation efforts.

**10. What does it mean for an employer and employee with a conviction record to engage in an “interactive assessment”?**

An “interactive assessment” takes place if, after considering mitigating factors, the employer preliminarily decides that the employee’s conviction record disqualifies the employee from employment. Then, the employer must notify the employee of the decision and the reasoning. The employee then has at least five business days to respond where the employee can dispute the accuracy of the relevant conviction record and present evidence in mitigation, such as rehabilitation. The employer cannot make a final decision without giving the employee an opportunity to respond to the employer’s preliminary decision.

**11. What happens if an employer takes action based on a conviction record without first engaging in an interactive assessment?**

If an employer takes action based on a conviction record without first engaging in an interactive assessment, the employer may be liable for committing a civil rights violation under the Illinois Human Rights Act.

**12. What happens if an employer takes action based on a conviction record without providing notification to an employee of a preliminary or final decision?**

If an employer takes action based on a conviction record without complying with the requirements of the interactive assessment by failing to properly notify an employee of a preliminary or final decision, the employer may be liable for committing a civil rights violation under the Illinois Human Rights Act.

**13. What if an employee or applicant doesn’t think their conviction matters for the job they have or are applying for, but the employer believes it does?**

When an employer determines that there is a substantial relationship between the conviction and the employment, or that the employment poses an unreasonable risk, an interactive assessment with the employee is required. During the interactive assessment, the employee has the right to respond with evidence to refute the employer’s decision. The employer must consider the evidence before making a final decision. If after reconsideration the employer disqualifies the employee, and the employee believes the disqualification was inappropriate, then the employee may file a charge with the Illinois Department of Human Rights.

**14. What are the consequences if an employer unlawfully discriminates on the basis of a conviction record?**

An employer, employment agency, or a labor organization that unlawfully discriminates on the basis of a conviction record may be liable for relief, including: a cease-and-desist order; actual damages to compensate for loss or injury; hiring, reinstatement, or promotion with backpay and fringe benefits; action to make the injured party whole; admission into or restoration of membership; and attorneys fees and costs.

**15. Does the prohibition of unlawful discrimination based on conviction record require an employer to change their recruiting or advertising practices for vacant positions?**

No. An employer is not required to change their recruiting or advertising practices for vacant positions unless the employer's practices consider conviction records in a manner that is inconsistent with the new conviction record amendment under the Illinois Human Rights Act.

**16. What types of employers are required to comply with the new conviction record protections of the Human Rights Act?**

The Illinois Human Rights Act defines the types of "employers" that are required to comply with the new conviction record protections. An "employer" is defined as "any person employing 1 or more employees within Illinois during 20 or more calendar weeks within the calendar year of or preceding the alleged violation [...t]he State and any political subdivision, municipal corporation or other governmental unit or agency;" any party to a public contract; and a "joint apprenticeship or training committee."

**Employee Questions**

**17. How are job applicants protected from discrimination under the new conviction record protection?**

Under the new conviction record protection, an employer can no longer disqualify a job applicant with a conviction record without assessing whether there is a substantial relationship between the conviction and the job, or an unreasonable risk in employing the individual in the particular job. If an employer disqualifies a job applicant with a conviction record, the applicant has the right to provide evidence to challenge the disqualification, which the employer must consider.

**18. How are current employees protected from discrimination under the new conviction record protection?**

Under the new conviction record protection, an employer can no longer use an employee's conviction record as the basis for employment decisions such as whether to promote, select for training, discipline or discharge the employee without first assessing whether there is a substantial relationship between the conviction record and the job, or an unreasonable risk in allowing the employee to hold a particular job. If an employer disqualifies a job applicant with a conviction record, the applicant has the right to provide evidence to challenge the disqualification, which the employer must consider.

**19. If an applicant for employment has a conviction record, when are they required to disclose it?**

Generally speaking, an applicant for employment is not required to disclose a conviction record prior to being made an offer of employment, and the employer requests the conviction record information. Unless authorized by law, an employer is prohibited from inquiring about an applicant's conviction record prior to making a job offer to the applicant.

**20. What should the applicant expect if an employer makes a preliminary decision to deny the applicant an employment opportunity based on a conviction record?**

If an employer denies an applicant an employment opportunity based on a conviction record, the employer is required to provide notice of that decision to the applicant. The notice must include the conviction(s) that the employer based its decision on, a copy of the applicant's conviction history report and an explanation of the applicant's rights to respond to the preliminary denial of employment.

**21. If a person is denied an employment opportunity based on a conviction record, what information can they provide to dispute the denial?**

A person who has been denied an employment opportunity based on a conviction record, may provide the following information to the employer to dispute the denial: evidence challenging the accuracy of the conviction record that is the basis for the disqualification, length of time since the conviction, the number of convictions that appear in the conviction record, the nature and severity of the conviction and its relationship to the safety and security of others, the facts or circumstances surrounding the conviction, the age of the applicant at the time of the conviction, or evidence in mitigation, such as rehabilitation.

**22. How much time does the applicant have to provide the information to dispute the denial of employment?**

An applicant has at least 5 business days to provide the information to dispute the denial of employment.

**23. What can an applicant for employment do if after submitting all their evidence, the employer still makes a final decision to deny them employment?**

If an employer issues a final decision denying an applicant employment because of a conviction record, and the applicant believes the denial was based on unlawful discrimination, the applicant can file a charge of discrimination with the Illinois Department of Human Rights by visiting [www.illinois.gov/dhr](http://www.illinois.gov/dhr) or by calling (312) 814-4320 or (866)740-3953 (TTY).

**24. What can a person do if they are experiencing discrimination at work because of their conviction record?**

A person who believes they are experiencing discrimination at work because of their conviction record has the right to file a charge of discrimination with the Illinois Department of Human Rights.

**25. How long does a person have to file a charge with the Illinois Department of Human Rights based on a conviction record?**

A charge of discrimination must be filed with the Illinois Department of Human Rights within 300 days after the date of the alleged conviction record discrimination.

## 26. How does a person file a charge with the Illinois Department of Human Rights?

A person who believes they have been discriminated against by an employer based on their conviction record may file a charge of discrimination with the Illinois Department of Human Rights by submitting a completed [Complainant Information Sheet \(CIS\)](#):

- In person at the [offices of the Illinois Department of Human Rights](#) in either Chicago or Springfield;
- By mail to the [Illinois Department of Human Rights](#) at either its Chicago or Springfield addresses;
- By email to the Illinois Department of Human Rights: [IDHR.Intake@illinois.gov](mailto:IDHR.Intake@illinois.gov) or [IDHR.Webmail@Illinois.gov](mailto:IDHR.Webmail@Illinois.gov); or
- By fax to the Illinois Department of Human Rights: (312) 814-6251.