

WASHINGTON FURTHER LIMITS CRIMINAL BACKGROUND CHECKS IN THE WORKPLACE: AN EMPLOYER'S GUIDE AND COMPLIANCE ACTION PLAN

Insights
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A new Washington law expands protections for job applicants and employees under the state's Fair Chance Act, aligning the statewide law more closely with Seattle's Fair Chance Employment Ordinance. Notably, employers will need to comply with more restrictions on when they can perform background checks on potential new employees and what they can do with the information gathered. While the changes will roll out in 2026 and 2027, it is not too early to start reviewing and potentially adapting your internal processes for conducting and using background checks in employment decisions. We'll explain everything you need to know and give you five steps you can take to comply before the changes kick in.

What Happened?

Gov. Bob Ferguson signed a bill ([HB 1747](#)) into law earlier this year that expands protections for applicants and employees under the Washington Fair Chance Act. This new law is effective on July 1, 2026, for employers with 15 or more employees, and January 1, 2027, for employers with less than 15 employees.

What is Changing?

Employers will be prohibited from conducting a criminal background check on an applicant until after the employer has made that applicant a conditional job offer. This changes the timing from current law, which requires only that an employer determine that an applicant meets the basic

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qualifications of the position before conducting a criminal background check.

The new law also places tighter restrictions on what an employer may do with the information from the criminal background check. Employers will be expressly prohibited from rescinding a job offer (or taking other adverse employment actions) due to an applicant's or current employee's **arrest record or juvenile conviction record**. There is an exception if the applicant or employee is currently out on bail or on their own recognizance awaiting a trial.

For **adult convictions**, an employer will need to have a legitimate business reason for taking an adverse employment action (such as termination or rescinding an offer). The employer must also notify the applicant or employee of the potential adverse action and hold the position open for two business days to provide them with an opportunity to correct or explain their record and provide other mitigating information.

If the employer still decides to take action, it must provide the applicant or employee with a written decision that includes specific assessments of the following factors:

- (1) impact of the conviction on the position or business operations, and
- (2) its consideration of the applicant's or employee's rehabilitation, good conduct, work experience, education, and training.

How Will the Washington Law Be Enforced?

The state attorney general's office retains the power to enforce the law and investigate violations. However, the amended Fair Chance Act substantially increases monetary penalties for *each* violation, starting at \$1,500 and increasing to \$15,000 per violation depending on the number of violations.

How is This Different Than FCRA?

It is important to note the slight differences between Washington's amended Fair Chance Act and the federal Fair Credit Reporting Act (FCRA). And an employer must comply with both. FCRA also requires employers to inform applicants in writing that they may use consumer reports in

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the hiring process. Before taking an adverse employment action, FCRA requires employers to provide the applicant with the copy of the report used, and a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act."

Employers must also provide applicants with time to review and dispute inaccuracies in the reports. However, under FCRA employers can inform the applicant orally or in writing about the adverse employment action, while Washington's new law requires a written notice. There are also additional guidelines of what must be provided to the applicant. FCRA also has requirements on how to dispose of information received.

What About Other Federal Laws?

Don't forget about Title VII and potential discrimination claims based on the use of criminal background checks. The EEOC has published guidelines [here](#), which require an individualized assessment based on certain factors, rather than a blanket exclusion based on convictions.

What About Local City Ordinances?

Seattle's [Fair Chance Employment Ordinance](#) has been in place since November 1, 2013, at the time creating some of the tightest restrictions on how employers could use conviction and arrest records in the hiring process. Employers hiring Seattle based employees must continue to comply with these rules.

What Should Employers Do?

- Start reviewing your process for conducting and using criminal background checks now.
- If any job postings disclose that an applicant will be subject to a background check after a conditional offer, ensure that the applicant is (1) immediately informed in writing of the requirements under RCW 49.94.010 (2), and (2) provided with a copy of the attorney general's [Washington Fair Chance Act Guide](#) for employers and job applicants.
- Confirm that job applications have no impermissible questions regarding criminal records and that your hiring team does not seek inappropriate information during interviews.

- Modify all pre-adverse action and adverse action notices to cite the law.
- Work with any third-party vendors who conduct background checks to ensure they also maintain compliance with the new state law.

Conclusion

For more information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Seattle office](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to receive the most up-to-date information directly to your inbox.