



Employer Toolkit

A guide for employers looking to adopt fair chance hiring practices and creating opportunities for formerly incarcerated people.

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Hudson Link for Higher Education in Prison provides college education, life skills and reentry support to incarcerated people so they can make a positive impact on their own lives, their families, and communities, resulting in lower rates of recidivism, incarceration, and poverty

Introduction



At Hudson Link for Higher Education in Prison, we've been partnering with colleges across New York State to run degree-granting programs inside correctional facilities since 1997.

Today, we have a community of over 1300 released alumni, the largest network of college-educated, formerly incarcerated individuals in the state.

It is a cornerstone of our beliefs that those closest to the problem are also closest to the solution. Over 70% of our team at Hudson Link is formerly incarcerated, including half of the leadership team. Our lived experiences empower us to work within our communities in unique and meaningful ways.


Many employers are making statements of inclusivity and are committing to social justice and criminal justice reform.

It is critical they move beyond performative measures to destigmatize incarceration by developing policies and practices that encourage equity. One such action, Fair Chance Hiring, can give the 70 million Americans with criminal conviction records a greater opportunity for employment and a more stable life.



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We hope that this toolkit helps employers understand:

- (1) **the value** formerly incarcerated people can bring to your team;
 - (2) **legal guidelines** regarding the hiring of formerly incarcerated people;
 - (3) **hiring practices** to reach more formerly incarcerated candidates;
 - (4) **ways to improve** your workplace culture to be more inclusive of formerly incarcerated employees.
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Why hire formerly incarcerated people?

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In addition to the moral and ethical reasons to hire formerly incarcerated individuals, there are numerous other benefits. Below are just five examples, among others, of the contributions formerly incarcerated individuals bring to the workplace.

“In our country, those who are formerly incarcerated are disproportionately people of color. The benefit of hiring formerly incarcerated individuals is that it places more people of color in positions where they can excel and be who they are without it having to be pointed at as someone who has been formerly incarcerated. They just become a person who brings value to your company.”

- Katherine Vockins of Rehabilitation Through the Arts,
Employer Testimonial



1 | **Research has shown that formerly incarcerated individuals are retained at higher rates which will reduce turnover and result in lower hiring and training costs for your company.** This can translate to significant savings when hiring and training a new employee costs the employer an estimated \$4,000.

“I wish employers knew that, even though some formerly incarcerated individuals are not young, we might be better for the job. Young people can take a lot for granted, but we'll work hard. Try us out and you'll see that sometimes older formerly incarcerated candidates might be a better fit.”

- Renee Fleming, Employee Testimonial

2 | **Employers miss out on high-quality applicants by excluding this pool of talent.** College-educated, formerly incarcerated individuals can offer a unique perspective to your team as our students often have diverse life experiences, a commitment to bettering their communities, and are hungry for knowledge.

“For our organization, having employees who have been in the system is incredibly important. They bring the voice of what it was really like on the inside. For those of us working with the incarcerated, having formerly incarcerated individuals on staff in key roles brings us the insight that we think we might know, but we really don't know in the same way as someone who has gone through the system.”

- Katherine Vockins of Rehabilitation Through the Arts, Employer Testimonial

“I wish employers could understand what skills and experiences people gain during incarceration that make them a good fit for certain positions.”

- Bernard Johnson, Employee Testimonial

3 | **The Federal Work Opportunity Tax Credit allows businesses \$2,400 in federal tax savings for each qualified formerly incarcerated employee.** There is no limit to how many qualifying employees you can hire, and many local municipalities have similar incentives.

4 | **Increasing employment rates for formerly incarcerated individuals is a positive to the economy overall.** It is estimated that barriers to employment for those with criminal records lead to a 78-87 billion loss in gross domestic product.¹

5 | **The United States Department of Labor offers a Federal Bonding Program that will provide an employer with a bond** that protects them against dishonest acts of the bonded employee, including theft, forgery, larceny, and embezzlement. These bonds have a limit of \$5,000 and have a \$0 deductible for the first six months of employment.

¹ Cherrie Bucknor & Alan Barber, Ctr. for Econ. & Policy Research, “The Price We Pay: Economic Costs of Barriers to Employment for Former Incarcerated individuals and People Convicted of Felonies” (2016)

What does the law say?

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FEDERAL LAW

The United States Equal Employment Opportunity Commission has guidelines on the consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act. While these guidelines do not prohibit employers from obtaining and using criminal background reports about job applicants or employees, they aim to ensure employers do not use the information obtained from these criminal background reports in a discriminatory manner.

There are two ways that employers who obtain criminal background information could use this information in a discriminatory manner. First, Title VII of the Civil Rights Act prohibits employers from discriminating against applicants with the same criminal histories based on their race, national origin, or other protected characteristic. Second, federal law also prohibits employers from collecting this information in order to disproportionately exclude a group or groups of individuals.

NEW YORK STATE LAW

According to **Article 23A of New York Correction Law**, a New York State Law that protects formerly incarcerated individuals from being illegal denied employment or licensure, “unfair discrimination against persons previously convicted of one or more criminal convictions is prohibited.”

Exceptions to this rule include:

1. There is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or
2. The issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

This law requires you, as an employer, to consider the following factors when reviewing the applications of formerly incarcerated individuals:

1. The public policy of New York State to encourage the licensure and employment of persons previously convicted of one or more criminal offenses
2. The specific duties and responsibilities necessarily related to the license or employment sought or held by the person
3. The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on their fitness or ability to perform one or more such duties or responsibilities
4. The amount of time since the offense occurred
5. The age of the individual at the time of the offense
6. The seriousness of the conviction
7. Any Evidence of Rehabilitation, including a Certificates of Relief or a Certificate of Good Conduct;
8. The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

Lastly, Article 23A requires you, as the employer, to provide upon request by a previously incarcerated individual, a written statement explaining the reasoning for your denial of licensure or employment. This statement must be fulfilled within thirty days of the request.

THE FAIR CHANCE ACT, LOCAL LAW NO. 63 (2015, REVISED 2019) IN NEW YORK STATE

Employers cannot ask about criminal records unless or until the employer makes an offer of employment; this includes in job interviews or job postings. Even if an applicant mentions their past involvement with the justice system, the employer should not ask any further questions and redirect the conversation.

Once an offer of employment is made, the employer may make the offer conditional upon the applicant passing a background check.

RESOURCES FOR FURTHER LEARNING:

Legal Action Center - **Fair Hiring and Employment**
U.S. Equal Employment Opportunity Commission - **Prohibited Employment Policies/Practices**
National Employment Law Project - **FAQ: Fair Chance to Compete for Jobs Act of 2019**



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Ways to make your **hiring practices** more encouraging and sensitive to formerly incarcerated applicants



1

Remove the box from your application.

Research has shown that having to check "the box" regarding criminal history can deter formerly incarcerated individuals even if they are interested in and qualified for the position.

3

Provide training and support to your HR team or staff in charge of hiring.

Familiarize front-line staff, hiring managers, and your HR team about fair hiring practices and the reasons to utilize them. It's critical for your team to be intentional about interactions with candidates from the moment of application. Ensure that the criteria hiring managers are using for candidate selection are documented and clear. You may want to include sensitivity training that acknowledges that many formerly incarcerated applicants may carry previous trauma from their past and from being victims of discriminative hiring practices.



2

Be transparent about how and why you conduct background checks.

Some positions and professions will require a background check (see **Getting to Work With a Criminal Record: New York State License Guides**). But if you have the choice to run a background check on applicants, make sure to disclose what security firm will be performing their background check and discuss the process of how applicants are entitled to a copy of the background check. Consider developing a statement that implies your organization/company's reasoning for the background check and that it is part of the hiring process used solely to verify prior employment history.

"When I was hired, the person who led my onboarding was not my direct supervisor. There was a really clear structure in place for what forms I needed to fill out as someone with a prior conviction, and my direct supervisor was never involved. I love that I can just show up to work and not think about my justice involvement. It allows me to really integrate into society."

– Anonymous, Employee Testimonial

4

Be proactive to reach qualified formerly incarcerated candidates.

Frame job postings that use language that is inclusive of formerly incarcerated individuals. Establish clear objectives for your fair chance hiring recruitment efforts. Develop relationships with reentry organizations such as Hudson Link. We have a community of over 1300 college-educated, formerly incarcerated individuals. We can share job postings with our network and even make referrals of qualified applicants.

Ways to change your workplace culture and make it welcoming and safe for formerly incarcerated employees:



1

Adopt inclusive, person-first language in the workplace

Although it may seem like a small change, person-first language is fundamental to a welcoming workplace environment.

Person-first language emphasizes the humanity of people first before recognizing other qualities or attributes. Adopting the terms in the table below will help foster an environment of dignity and respect for formerly incarcerated individuals.

PREFERRED LANGUAGE

Incarcerated individual, person impacted by the justice system, person in prison or jail

Formerly incarcerated individual, person with past justice-involvement, person with justice history

Person under parole supervision

Person previously convicted of a sex offense

STIGMATIZING LANGUAGE

Felon, convict, offender, inmate, criminal, prisoner

Ex-con, former inmate, former prisoner, ex-offender

Parolee

Sex offender

Ways to change your workplace culture and make it welcoming and safe for formerly incarcerated employees:

2

Set Meaningful and Realistic Pathways

While some formerly incarcerated individuals may be returning home to their communities with a college degree, this does not mean all are accustomed to traditional workplace culture. Formerly incarcerated individuals returning to the workforce may need time to transition into full workplace responsibilities.

Setting a clear path from entry-level tasks to more meaningful ones can help maintain high motivation and morale. There are many ways to accomplish this, but one helpful tip is to create a progression model with the employee for their transition to the workplace. This model can include expectations and goals, a clear set path forward, and dates to assess.

"I wish more employers did a 5-week internship to test out potential employees. My company tried me out and I worked hard. It was very profound to be given that chance."

- Renee Fleming, Employee Testimonial

"It was important for our program participants to see this pathway. Beyond the pathways that already existed for community at our organization, there is now an employee pathway that's been developed for our participants."

- Kate Pfaff of Carnegie Hall, Employer Testimonial

"Black Veterans for Social Justice believes in and gives second chances to formerly incarcerated individuals who want it. They train employees and then when promotions open up they hire in-house first. Since being employed at Black Vets I received an array of training from mental health first aid to food protection and fire and safety. This training paves way for other employment or/and promotion within the agency."

- Brandon Holmes, Employee Testimonial

3 Ways to change your workplace culture and make it welcoming and safe for formerly incarcerated employees:

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Flexible Scheduling

Individuals returning home to our communities upon release have many responsibilities to take care to get reacclimated. These responsibilities can include parole or medical appointments, getting a photo ID, finding a place to live, and more.

All of these responsibilities may require your new employee, on occasion, to come to work late or leave early. Employers who understand this transition process will be better able to support formerly incarcerated individuals.

4 Be Trusting While Holding People Accountable

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Having patience and understanding while your new employee learns about workplace culture will go a long way. Giving time to learn the ins and outs of the workplace will allow individuals to show that they are highly capable individuals with much experience to offer your organization. To create a welcoming and safe environment, give employees the space needed to do new job assignments while still holding employees accountable.

“There’s no judgement. They don’t care where I’ve been or how many other jobs I held. I am reliable and was given the opportunity to prove that to them.”

- Renee Fleming, Employee Testimonial

Ways to change your workplace culture and make it welcoming and safe for formerly incarcerated employees:

5

Consult with Hudson Link or Other Reentry Organizations

We can provide support, guidance, and leadership to your workplace on creating an inclusive workplace.

"Our senior leadership was initially very hesitant about hiring someone who had been incarcerated. Our programming staff brought in [an expert from an organization that focuses on reentry] to do a Q&A with our senior staff. This gave [our organization's leadership] a chance to voice any concerns about what this meant and talk to someone whose job and career is about providing next steps and livelihood for people in reentry."

- Anonymous

Additional Resources:

- **ACLU Report- Back to Business: How Hiring Formerly Incarcerated Job Seekers Benefits Your Company**
- **Getting to Work With a Criminal Record: New York State License Guides**
- **Can Jobs Reduce Recidivism?**



Hudson Link
for Higher Education in Prison

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