

Fair Chance Hiring for Employers

Part One: Understanding the Importance of Fair Chance Hiring

By Beth Avery, Senior Staff Attorney

For most jobs, employer background checks are unnecessary. However, if your company performs background checks for some or all positions, it can adopt policies to reduce unfair barriers to hiring workers with arrest and conviction records. NELP's eight-part "Fair Chance Hiring for Employers" series of policy briefs comprehensively explores the steps employers can take toward fair chance hiring. Part One lays out many of the reasons your company should implement the steps to fair chance hiring outlined in Parts Two to Eight of this series.

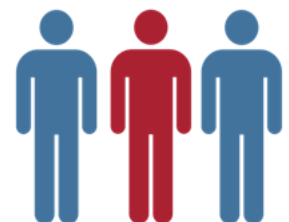
The Responsibility and Opportunity of Employers

All of us are stakeholders in building a just and inclusive economy. That fact has been underlined by the COVID-19 pandemic and recent racial justice uprisings, both of which have brought renewed institutional attention to long-standing racial and economic inequalities in the United States. Much of this attention has been focused on the workplace; across the nation, working people of color are segregated into the lowest paid, least stable, and most dangerous jobs.¹ Employers and their human resources departments therefore have an outsized opportunity to make changes that will have significant, rippling impacts. The need for change is apparent in many industries that have predominantly white workforces and concentrate Black and Latinx workers in the most junior, lowest paid jobs.²

"A just and inclusive economy is only achievable by centering racial equity. The fact that a disproportionate share of people in underpaid, insecure, and unsafe jobs are Black and brown is not inevitable, nor accidental."

— Rebecca Dixon, Executive Director, National Employment Law Project

A significant barrier to securing a good job is having an arrest or conviction record. Following decades of mass criminalization, over 70 million people, or nearly one in three U.S. adults, have such a record that can show up on an employment-related background check and stand in the way of a good job.³ Excluding workers with records contributes to the lack of racial diversity and to occupational segregation across the U.S. economy.



Employer policies that increase the hiring and retention of workers with records in good jobs mean a fighting chance for those workers to build economic stability for themselves, their families, and their communities. Given the disproportionate number of Black, Latinx, and Indigenous people who have been impacted by the criminal legal system,⁴ fair chance hiring reforms also represent an institutional commitment to racial and economic equity.

What is fair chance hiring?

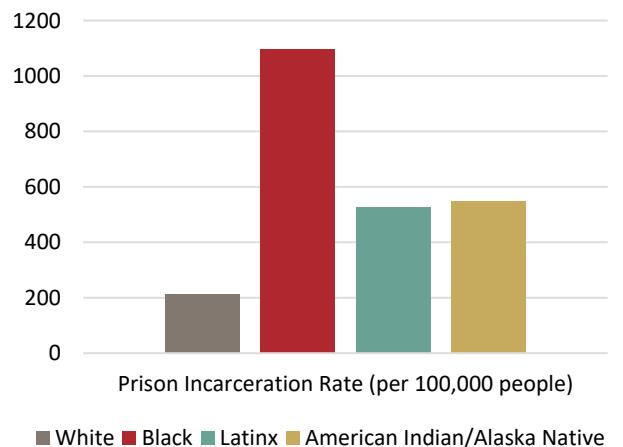
Fair chance hiring refers to employer policies or practices that expand job opportunities for people with arrest and conviction records. Some of the simplest reforms include removing conviction record inquiries from job application forms so that employers judge applicants on their qualifications first, replacing blanket hiring bans with individualized assessments that consider the age of an offense and its relevance to the job, and implementing transparent processes that provide candidates with an opportunity to review background check reports and provide additional information. Sometimes these changes are adopted voluntarily by employers and sometimes they are mandated by law.

The Criminal Legal System and Racism

Anti-Black racism, and racial discrimination more broadly, in the criminal legal system is both well-documented and staggering. The decisions and actions of police, prosecutors, judges, parole boards, and other system actors regularly cause harm to Black, Latinx, Indigenous, and immigrant communities, as well as people experiencing poverty. Racial profiling, prosecutorial bias, sentencing discrimination, and other targeting strategies have resulted in dramatic racial disparities: nationwide, Black people are incarcerated at five times the rate of white people.⁵ Racial differences in incarceration are not explained by disparate offense rates but rather by the biased decisions of actors throughout the criminal legal system.⁶

The criminal legal system impacts more than the individuals directly involved. Criminal records and incarceration also affect individuals' families (particularly children) and neighborhoods. Approximately half of all children have at least one parent with an arrest or conviction record.⁷ Again, certain communities of color are disproportionately impacted—one in nine Black children have an incarcerated parent, compared to one in fifty-seven white children.⁸ Black and Latinx neighborhoods also carry the economic burden of criminalization both in lost local economic activity and lost income.⁹

Black People Imprisoned at Five Times the Rate of White People



The Racialized Financial Impact of an Arrest or Conviction Record

A stable source of income is a paramount determinant of meeting one's fundamental needs after incarceration.¹⁰ Yet, perversely, people with records are routinely denied opportunities to work. Employers frequently and unfairly refuse to hire people with records because of the stigma that follows anyone impacted by the criminal legal system. Roughly 60 percent of people who have been incarcerated remain unemployed a year after release.¹¹ People with a history of incarceration are four to six times more likely to be unemployed than similarly situated peers without a record.¹² And only 55 percent of formerly incarcerated people report any earnings whatsoever during the year after release, with their median earnings barely exceeding \$10,000.¹³

Unemployment numbers don't tell the full story. Even when people with records find employment, they are often offered the most unstable, dangerous, and underpaid jobs.¹⁴ Or their only option is to seek alternative means of earning income that lack the protections of formal employment.¹⁵ What's worse, people with records are typically expected to be grateful for even the worst job opportunities, and probation or parole work requirements sometimes force them to take jobs they otherwise wouldn't under the threat of reincarceration.¹⁶ On average, formerly incarcerated individuals experience a 52 percent annual earnings reduction, resulting in half a million dollars less in lifetime earnings.¹⁷

The negative employment outcomes experienced by people with arrest or conviction records are further compounded for workers of color, especially those who are Black. The labor market already disadvantages certain workers of color, regardless of arrest or conviction history, and a record exacerbates these racist outcomes. Black workers *without* an arrest or conviction record receive fewer job callbacks and earn less annually than white workers *with* a record (who, in turn, receive fewer callbacks and earn less than white workers without a record). Black workers with records fare worst of all.¹⁸ Similarly, while the unemployment rates for both white and Black workers increase significantly for workers who have been incarcerated, the percentage increase for formerly incarcerated Black workers is nearly double what it is for formerly incarcerated white workers.¹⁹ Thus, not only are Black communities more impacted by mass incarceration, but Black workers with records are penalized in the labor market more harshly than white workers with records. Simply put, bias against workers with records is inseparable from anti-Black racism.

- Employers are less likely to call back Black and Latinx applicants than white applicants,²⁰ and they pay Black and Latinx workers less on average.²¹ A record exacerbates these racist outcomes.
- Unemployment rates for Black men and women who have been incarcerated are almost double the rates for white men and women who have been incarcerated, respectively.²²
- Job applicants with records face a labor market that already disadvantages applicants of color in employer callbacks, and this built-in racist disadvantage is compounded by a record.²³

The Role of Human Resources in Fair Chance Hiring

Workers with records need and deserve meaningful and reliable access to income through employment. Employers, in turn, owe those workers—and their families and communities—fair opportunities to work and advance.

Encouraging your company to embrace fair chance hiring is not only the right thing to do—it will represent a smart change for your company. Employers that have already made such changes have praised the enthusiasm and work ethic of their new employees as they take steps toward building a more diverse workforce.

Your company and HR team can take concrete steps toward welcoming and retaining a more diverse staff, including workers with records. Years of work with employers in various industries, including health care,²⁴ higher education,²⁵ philanthropy,²⁶ and financial services, have illuminated the crucial role of human resources staff, recruiters, and hiring managers in the transformation toward more equitable workplaces. These roles represent where the rubber hits the road and where internal policy change will succeed or fail.

So your team wants to transform the hiring process at your institution to be more equitable and expand opportunities for people with arrest and conviction records. That transformation includes increasing hiring at the front end and providing adequate, ongoing career support to ensure longevity and advancement. Your company may have adopted *some* of these steps already, in which case we encourage you to read our other briefs to learn about opportunities for further improvement. Even if your company is not ready to make every change now, you can begin to lay the groundwork for future progress.

Acknowledgements

Special thanks to the advocates at Safer Foundation and Cabrini Green Legal Aid for informing the content of this policy briefs through the insights, learnings, and client interviews that they shared with NELP. Thank you also to NELP colleagues Han Lu, Kemi Role, and Michelle Natividad Rodriguez for research, drafting, and editing contributions to this policy brief.

Endnotes

¹ For example, Black, Latinx, and women workers are overrepresented in jobs paying less than \$15 an hour and in industries and occupations that have some of the highest proportions of workers earning less than \$15 an hour. Laura Huizar and Tsedeye Gebreselassie, *What a \$15 Minimum Wage Means for Women and Workers of Color* (New York: National Employment Law Project, 2016), <https://www.nelp.org/wp-content/uploads/Policy-Brief-15-Minimum-Wage-Women-Workers-of-Color.pdf>. As another example, Black and Latinx workers are overrepresented in temporary staffing work. Black workers comprise 12.1 percent of the overall workforce but 25.9 percent of workers employed by temporary staffing agencies. Latinx workers comprise 16.6 percent of all workers but 25.4 percent of workers employed by temporary staffing agencies. National Employment Law Project, “America’s Nonstandard Workforce Faces Wage, Benefit Penalties, According to U.S. Data,” news release, June 7, 2018, <https://www.nelp.org/news-releases/americas-nonstandard-workforce-faces-wage-benefit-penalties-according-us-data/>.

² See, for example, Alex Hickey, “8 Charts that Explore Racial Disparities in the Banking Industry,” Morning Brew, May 18, 2021, <https://www.morningbrew.com/daily/stories/2021/05/18/8-charts-explore-racial-disparities-banking-industry> (synthesizing 2018 EEO-1 data from the EEOC).

³ Anastasia Christman and Michelle Natividad Rodriguez, *Research Supports Fair-Chance Policies* (New York: National Employment Law Project, 2016), <https://www.nelp.org/publication/research-supports-fair-chance-policies/>.

- ⁴ Prison Policy Initiative, “Racial Disparities in Incarceration Rates, 2019,” https://www.prisonpolicy.org/graphs/incarceration_byrace_2019.html.
- ⁵ Prison Policy Initiative, “Racial Disparities.”
- ⁶ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (Washington, DC: Sentencing Project, 2021), 12–16, <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>. For instance, the cited report discusses how anti-Black racism increases the likelihood that individuals throughout the system will exercise their discretion in ways that leads to incarceration. For example, officers exercise discretion to arrest someone, judges decide whether and how high to set bail, prosecuting attorneys’ exercise great discretion over whether and what to charge and offer pleas, and judges and juries make decisions on whether to convict, offer parole, and how harshly to sentence.
- ⁷ Rebecca Vallas et al., *Removing Barriers to Opportunity for Parents with Criminal Records and Their Children* (Washington, DC: Center for American Progress, 2015), 1, <https://cdn.americanprogress.org/wp-content/uploads/2015/12/09060720/CriminalRecords-report2.pdf>.
- ⁸ Bruce Western and Becky Pettit, *Collateral Costs: Incarceration’s Effect on Economic Mobility* (Philadelphia: Pew Charitable Trusts, 2010), 4, https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf.
- ⁹ Center for Spatial Research, Columbia University, “Million Dollar Blocks Project,” last visited December 13, 2021, <https://c4sr.columbia.edu/projects/million-dollar-blocks>.
- ¹⁰ See, for example, Mark T. Berg and Beth M. Huebner, “Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism,” *Justice Quarterly* 28, no. 2 (2011), 382, <https://www.tandfonline.com/doi/abs/10.1080/07418825.2010.498383?journalCode=rjqv20&#preview>.
- ¹¹ Beth Avery, Maurice Emsellem, and Han Lu, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions* (New York: National Employment Law Project, 2019), <https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>.
- ¹² Dallas Augustine, Noah Zatz, and Naomi Sugie, *Why Do Employers Discriminate Against People with Records? Stigma and the Case for Ban the Box* (Los Angeles: UCLA Institute for Research on Labor & Employment, 2020), <https://irle.ucla.edu/publication/why-do-employers-discriminate-against-people-with-records-stigma-and-the-case-for-ban-the-box/>.
- ¹³ The Brookings Institution used IRS data to track labor market outcomes and economic characteristics of incarcerated people. Adam Looney and Nicholas Turner, *Work and Opportunity Before and After Incarceration*, (Washington, DC: Brookings Institution, 2018), <https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>.
- ¹⁴ Naomi F. Sugie, “Finding Work: A Smartphone Study of Job Searching, Social Contacts, and Wellbeing After Prison” (PhD diss., Princeton University, 2014), <https://www.ojp.gov/pdffiles1/nij/grants/248487.pdf>.
- ¹⁵ Sugie, “Finding Work,” 32; Anne Field, “More Entrepreneurship, Less Recidivism Among the Formerly Incarcerated,” *Forbes*, November 29, 2020, <https://www.forbes.com/sites/annefield/2020/11/29/more-entrepreneurship-less-recidivism-among-the-formerly-incarcerated/?sh=2ce5d7a92c6d>.
- ¹⁶ Han Lu, Laura Padin, Maya Pinto, *Local 79 Fights the Criminalization of Laborers* (New York: National Employment Law Project, 2021), <https://www.nelp.org/publication/local-79-fights-the-criminalization-of-laborers/>.
- ¹⁷ Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings* (New York: Brennan Center for Justice, 2020), <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.
- ¹⁸ Over the course of an entire career, the Brennan Center estimates that Black workers with an arrest or conviction record earn \$37,000 on average annually, while similarly situated white workers with an arrest or conviction record earn \$49,000. Black workers without an arrest or conviction record earn \$39,000 on average annually, while similarly situated white workers without an arrest or conviction record earn \$52,000. Craigie et al., *Conviction*; see also Devah Pager, “The Mark of a Criminal Record,” *American Journal of Sociology* 108, no. 5 (March 2003), <https://doi.org/10.1086/374403>.
- ¹⁹ Lucious Couloute and Daniel Kopf, *Out of Prison & Out of Work* (Northampton, MA: Prison Policy Initiative, 2018), <https://www.prisonpolicy.org/reports/outofwork.html>. In 2008, when the national unemployment rate was only 5.8 percent, formerly incarcerated people were unemployed at over 27 percent—a rate higher than the general unemployment rate experienced at the peak of the Great Depression. The labor market penalizes formerly incarcerated Black women and men much more harshly than formerly incarcerated white people. While the unemployment rate jumps by 14 percent and 18 percent for white men and women who have been incarcerated, it increases by 27 percent and 37 percent for Black men and women who have been incarcerated.
- ²⁰ A recent meta-analysis of hiring discrimination field experiments found that hiring discrimination against African Americans has not decreased in the past 25 years. The researchers found that, on average, white job applicants receive 36 percent more callbacks than African Americans, and 24 percent more callbacks than Latinx applicants. The researchers examined two kinds of experiments, using resumes and in-person matched pair testing. In both cases, the experiment compared applicants with similar levels of education and experience. In fact, their results were durable even when accounting for education, gender, occupational grouping, study method and local labor market conditions. See Lincoln Quillian et al., “Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring Over Time,” *PNAS* 114, no. 41 (October 2017), 10870, <https://www.pnas.org/content/early/2017/09/11/1706255114.full>.
- ²¹ Marie T. Mora and Alberto Dávila, *The Hispanic–White Wage Gap Has Remained Wide and Relatively Steady*, (Washington, DC: Economic Policy Institute, 2018), <https://www.epi.org/publication/the-hispanic-white-wage-gap-has-remained-wide-and-relatively-steady-examining-hispanic-white-gaps-in-wages-unemployment-labor-force-participation-and-education-by-gender-immigrant/>; Valerie Wilson and William M. Rodgers III, *Black-White Wage Gaps Expand with Rising Wage Inequality*, (Washington, DC: Economic Policy Institute, 2016), <https://files.epi.org/pdf/101972.pdf>.

²² Couloute and Kopf, *Out of Prison*.

²³ The Brennan Center estimates that, over the course of an entire career, Black workers with an arrest or conviction record earn \$37,000 on average annually, while similarly situated white workers with an arrest or conviction record earn \$49,000. Black workers without an arrest or conviction record earn \$39,000 on average annually, while similarly situated white workers without an arrest or conviction record earn \$52,000. Craigie et al., *Conviction*; see also Pager, “Mark of a Criminal Record.”

²⁴ Sodiqa Williams et. al., *A Healthcare Employer Guide to Hiring People with Arrest and Conviction Records* (New York, Chicago: National Employment Law Project, Safer Foundation, 2016), <https://www.nelp.org/wp-content/uploads/NELP-Safer-Toolkit-Healthcare-Employer-Guide-Hiring-People-with-Arrest-Conviction-Records.pdf>.

²⁵ Marc LeForestier, “Using Criminal History Records in Hiring,” California Community Colleges, legal advisory, December 31, 2018), <https://www.cccco.edu/-/media/CCCO-Website/About-Us/Divisions/Office-of-the-General-Counsel/Legal-Advisories/2018-12-31-Legal-Advisory-re-Use-of-Criminal-History-in-Hiring-Final.ashx?la=en&hash=6C4754B916DF42371F3FBAAC314D58E8E637A579> (providing guidance on use of criminal history records in hiring, which NELP helped develop).

²⁶ *Fair-Chance Hiring in Philanthropy* (Los Angeles, New York: Executives’ Alliance for Boys and Men of Color, Formerly Incarcerated, Convicted People & Families Movement, National Employment Law Project, 2016), <https://www.nelp.org/publication/fair-chance-hiring-in-philanthropy-a-step-by-step-guide/>.

© 2023 National Employment Law Project. This report is covered by the Creative Commons “Attribution-NonCommercial-NoDerivs” license fee (see <http://creativecommons.org/licenses>). or further inquiries, please contact NELP (nelp@nelp.org)