



# The Fair Chances Hiring Process Act

## Public Law 34-22

SHRM Guam Breakfast Briefing  
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# DISCLAIMER

- The material presented is for informational purposes only and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem.
- Wait and see...Guam DOL required to issue rules and regulations



# THE FAIR CHANCES HIRING PROCESS ACT ("FCHPA")

Can you still ask an applicant for  
employment for a police clearance or  
court clearance?

# EFFECTIVE DATE

- Yes.
- The FCHPA was signed into law on July 13, 2017 and is effective 210 days after enactment.
- **Not effective until February 8, 2018.**
- After February 8, 2018, only conviction and pending criminal cases post-offer.





# Job Application

Have you ever been convicted of any law violation? Include any plea of "guilty" or "no contest." Exclude minor traffic violations.)

..... Yes ☐ No ☐

If yes, give details

(A conviction will not necessarily disqualify an applicant for employment.)

# SO...IS THIS OK COME FEBRUARY 8, 2018?

- Depends.
- FCHPA not applicable to employers with 15 or less employees.
- Also the prohibition against inquiring into an applicant's criminal history not applicable:
  1. Where any federal or local law/regulation requires the consideration of an applicant's criminal history;
  2. To any position designated by the employer as part of a federal or local gov't position designed to encourage the employment of those with criminal histories; or
  3. To any position which requires the employee to work in close proximity of or provide programs, services or direct care to minors.

# REAL LIFE (SORT OF) EXAMPLE

George Washington applied for a customer service position with Cherry Tree, Inc. After he submitted a job application, he was selected for an interview. While Martha, the HR Manager, was interviewing George, he suddenly blurted out, “I cannot tell a lie. I have a break in service because I served time at DOC.”



What should Martha do?



# REAL LIFE (SORT OF) EXAMPLE

1. Hire George for being so honest?
2. Stop the interview?
3. Ignore George's outburst and move onto the next question?
4. Inform George that he is not required to disclose that information during his interview?



# CONDITIONAL OFFERS

Let's pretend George did not disclose any information regarding his criminal history to Martha during his interview. After the interview, Martha is so impressed by George that she gives him a conditional offer of employment for the customer service position. She informs George that the offer is conditioned on his providing Cherry Tree, Inc. with a police clearance and court clearance.

Do you see any problems with Martha's request?

# CONDITIONAL OFFERS

- Yes.
- Under the FCHPA, no arrest record.
- No criminal cases which resulted in dismissal, expungement, sealing or did not result in a conviction.
- May ask about a plea of nolo contendere, a deferred adjudication (arising from a felony or misdemeanor criminal accusation), or about a pending criminal case.



Under what circumstances can  
an employer withdraw a  
conditional offer to an applicant?

# WITHDRAWAL OF CONDITIONAL OFFER

For a legitimate business reason.



# LEGITIMATE BUSINESS REASON?

Factors for the determination of a *legitimate business reason*:

1. The specific duties and responsibilities necessarily related to the employment sought or held by the person;
2. The bearing, if any, that the open criminal case or criminal history will have on the applicant's fitness or ability to perform one or more such duties;
3. The time which has elapsed since the occurrence of the pending criminal case or criminal history



# LEGITIMATE BUSINESS REASON?

Factors for the determination of a *legitimate business reason*:

4. The age of the person at the time of the pending criminal case or criminal history;
5. The frequency and severity of the pending criminal case or criminal history;
6. Any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct since the occurrence of the pending criminal case/history.

 **REPEAT**  
 **OFFENDER**



What happens if an employer  
terminates a conditional offer?

# TERMINATION OF CONDITIONAL OFFER

- Nothing unless...
- Applicant may request within 30 days: (1) a copy of all records received by the employer regarding the employee, including criminal records; and (2) a written Statement of Denial.





# TERMINATION OF CONDITIONAL OFFER

- Applicant must file an administrative complaint within 90 days after notice of denial of employment.



# WRITTEN STATEMENT OF DENIAL

1. Articulates the legitimate business reason for denial.
2. Demonstrates consideration of each of the legitimate business reason factors.
3. Advises the applicant of his or her right to file an administrative complaint with the GDOL



# EMPLOYER FAILS TO PROVIDE A WRITTEN STATEMENT OF DENIAL

- The failure to provide the Statement of Denial upon request shall create a rebuttable presumption that no legitimate business reason exists for denying the applicant employment or taking an adverse action against an employee on the basis of criminal history.
- Employer can “rebut” the presumption by putting forward contrary evidence.

# REMEDIES FOR VIOLATIONS OF THE FCHPA

- A person claiming to be aggrieved may file an administrative complaint with the GDOL.
- Must be made within ninety (90) days of notification of denial of employment by an employer.
- Person claiming to be aggrieved shall not have a private cause of action in any court.



# EMPLOYER FINES

- The GDOL is authorized to issue fines for violations in accordance with the following monetary caps:
  1. Employers that employ fifteen (15) to thirty (30) employees, a fine up to, but not more than: \$\_\_\_\_\_, per violation.
    - Contradicts definition of employer
  2. Employers that employ thirty-one (31) to ninety-nine (99) employees, a fine up to, but not more than: \$\_\_\_\_\_, per violation.
  3. Employers that employ one hundred (100) or more employees, or for any Government of Guam agency, a fine up to, but not more than: \$\_\_\_\_\_, per violation.

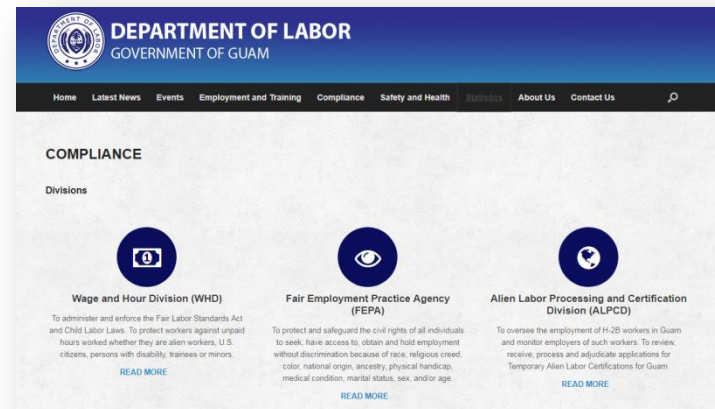
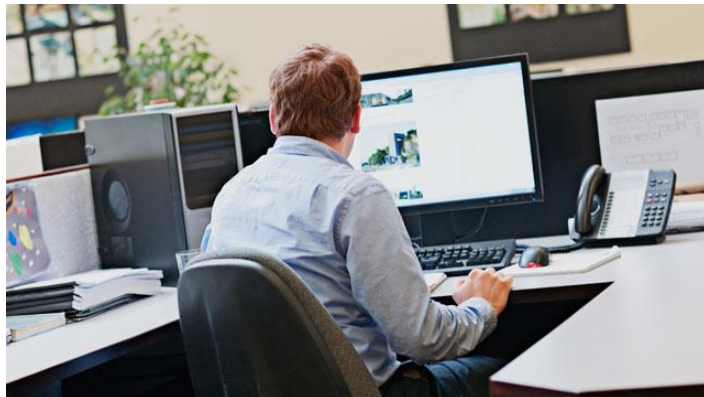
# UNPAID PENALTIES?

The GDOL may refer any unpaid penalties to the Department of Revenue and Taxation, or other appropriate licensing entities, who shall require that all penalties be paid in full before renewing a business license.



# EMPLOYERS WITH MULTIPLE VIOLATIONS

In the event an employer is found to have more than one (1) violation, the GDOL shall post the name of the employer on the GDOL official website, which shall remain on the website for a period of seven (7) years.





# ANY QUESTIONS?

## Thank you!

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