



# Fair Chances Hiring Process Act (FCPHA)

Public Law 34-22

February 7, 2018

SHRM Guam Breakfast Briefing

Lotte Hotel Guam



**Presented by:**

Guam Department of Labor

Dr.. Sam Mabini, Director

Jeffrey Sablan, Fair Employment Practice Officer

Greg Massey, ALPCD Administrator

# Fair Chances Hiring

## Pre FCHPA- Monitored Ads

- Since 2016
- Provide Awareness/EEOC Best Practices

## Intent of Law

- Help reintegrate individuals
  - Remove barriers

## Administrative Rules

- Pending AAA Rulemaking Process
- Interim Best Practices



# Legislative & Rulemaking Process


- Legislature passes bill and Governor signs into law



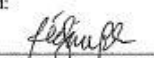
*I MINA'TRENTAI KUATTRO NA LIHESLATURAN GUÁHAN*  
2017 (FIRST) Regular Session

**CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LÁHEN GUÁHAN**

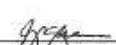
This is to certify that **Bill No. 40-34 (COR)**, "AN ACT TO *ADD A NEW CHAPTER 6 TO DIVISION 1 OF TITLE 22, GUAM CODE ANNOTATED, RELATIVE TO THE FAIR CHANCES HIRING PROCESS ACT,*" was on the 30<sup>th</sup> day of June 2017, duly and regularly passed.

  
Benjamin J. Cruz  
Speaker


Attested:

  
Regine Biscoe Lee  
Legislative Secretary

This Act was received by *I Maga'láhen Gudhan* this 03 day of July, 2017, at 2:10 o'clock P.M.

  
Assistant Staff Officer  
*Maga'láhi's Office*

APPROVED:

  
EDWARD J.B. CALVO  
*I Maga'láhen Gudhan*

Date: JUL 13 2017

Public Law No. 34-22

# Legislative & Rulemaking Process (cont'd)

- Act requires rulemaking through the Administrative Adjudication Act (AAA) process
  - Department drafts rules
  - Public Hearing required
  - Final draft reviewed & approval by AG & Governor
  - Final sent to Speaker of Legislature for action or lapses into law in 90 days
  - FINAL IMPLEMENTATION

0017 GAR - LABOR RELATIONS  
DIV. 1 - DEPARTMENT OF LABOR  
CH. 6 - FAIR EMPLOYMENT PRACTICE

## CHAPTER 6 FAIR EMPLOYMENT PRACTICES

§6101. Authority.  
§6102. Statement of Policy.  
§6103. Purpose.  
§6104. Definitions.  
§6105. Complaint.  
§6106. Same: Form and Contents; Time for Filing.  
§6107. Same: Filing.  
§6108. Same: Service, Amendment or Withdrawal.  
§6109. Investigation of Complaints.  
§6110. Conciliation.  
§6111. Dismissal of Complaints.  
§6112. Predetermination Settlement.  
§6112. Reconsideration of Decision for Dismissal.  
§6113. Department's Order.  
§6114. Hearings.

NOTE: Rule-making authority cited for Director of the Department of Labor, 22 GCA §3305 and §5210.

§6101. Authority. By virtue of the authority vested in it by 22 GCA Chapter 3 and §5210, the Department of Labor hereby issues these Rules and Regulations, which it finds necessary in order to carry out its responsibilities in the administration and enforcement of the provisions of the law as it relates to Unlawful Employment Practice and/or Discrimination. These Rules and Regulations shall be liberally construed to accomplish the purposes of the law and the policies of the Department and shall be in force and effect until such time that it is amended or rescinded by rules and regulations hereafter made and published by the Department of Labor.

§6102. Statement of Policy. It is the public policy government of Guam to protect and safeguard the civil rights of all individuals to seek, have access to, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, sexual orientation and/or gender identity. Employment practices should treat all individuals equally, evaluating each individual only on the basis of bona fide occupational qualification, unless pursuant to permissible defense as enumerated in the law.

1 Version 4.1



# Today's Agenda

- Effective Date
- Interim Enforcement
- Government Process
- Interim Best Practices
- Records
- Easily avoided costly mistakes
- Scenarios





# Effective Date

February

8

## **Act Effective February 8, 2018**

- Pending rule approval, interim enforcement process, common best practices
- Prohibits police and court clearances before job offer
- Applies to more than 15 employees
- Only conviction and pending criminal cases
- Withdrawal for legitimate business reasons



# Interim Enforcement

## Department of Labor

- Good Faith Efforts
- Apply best practices while rules undergo promulgation
- Seek FEPD guidance
- Enforcement Consideration/Penalty Waivers
- Deferred Enforcement for Willful Violators



# Government Process

## ❑ Complaints

- Providing Complainant Assistance
- Valid Photo ID required
- Complaint Form
- File within 90 calendar days of employment denial



COMPLAINT FORM	
4. How Did You Hear About OGC:	
Please Specify:	
5. Complainant's Name - Last, First, Middle	6. Date of Birth
10. Home Address	
11. Work Address	13. Occupation
15. Other Means of Contacting Complainant (cell phone, page, e-mail, friend, etc.)	16. General Nature
17. Location of Incident	18. D.C. Ward (ch





# Government Process (cont'd)

## ❑ Investigation

- Fact Finding/Job Site Inspection
- Request for Information (Documents)
- Complainant/Employee/Employer Interview Process





# Interim Best Practices



# Job Advertisements

## ❑ ***Don't use statements that convey categorical exclusions***

- “No felons need apply”
- “No criminal background”
- “Clean Criminal Records”



## ❑ ***Best Practice - stick with Job requirements***

- Basic position requirements
- Job Benefits
- Where to apply



Health  
Benefits



401(k)  
Matching



Education  
Assistance



Online Associate  
Discount Center



# **SAMPLE**

## **EMPLOYMENT OPPORTUNITY**

### **Palletizer/ Warehouse Assistant**

Soda Popinsky's Bottling Company  
165I Shady Street, Suite 100, Tamuning, GU.



Our Freight Department has an opening for a Palletizer/Warehouse Assistant. You will be responsible for unloading ship containers, pulling products, palletizing and loading company trucks for distribution.

#### **Requirements:**

- 1) You must have a high school diploma/GED.
- 2) Must possess valid Chauffeurs License. (If none you have 45 days after hire to obtain one).
- 3) Must be able to lift 50 lbs and over.
- 4) Must have reliable transportation.

#### **Benefits:**

Paid vacation, holiday pay, 401K, medical & dental insurance.

We value reliability, honesty and professionalism and will train the right candidate.

Your responsibilities may include arranging delivery schedules and working with customers and fellow employees to ensure shipments and deliveries are handled with care.

Please apply at our Human Resource Office or Apply Online at [www.sodapoplove.com](http://www.sodapoplove.com).

We are an Equal Opportunity Employer

**SAMPLE**

## **JOB ANNOUNCEMENT**

# **All Star Sporting Goods**



## **Cashier/Sales Representative**

### **The ideal candidate:**

- Must be a High School Graduate or have a G.E.D.
- Must have (2) years experience in retail
- Males Preferred
- Must have a valid driver's license
- Must have reliable transportation
- Must submit Police and Court Clearance with application

Interested individuals may **apply in person** between 8:00 am - 5:00 pm, MONDAY-FRIDAY on the 1st FL Human Resource Department, **All Star Sporting Goods Building. No Phone Calls Please.**

# Police/Court Clearances Exemptions

You are exempt if:

1. A federal or local law or regulation requires the consideration of an applicant's criminal history for the purpose of employment.
2. Any position designated as part of a federal or local government position or obligation that is designed to **encourage** the employment of those with criminal histories.
3. Any position which requires that employee to work in close proximity of or provides programs, services, or direct care to minors.





# Factors to consider

- ✓ Does the position being filled meet employment criteria of the person being considered?
- ✓ Does the previous conviction record prevent the applicant from performing required duties and responsibilities as required by the job description?



# Factors to consider (cont'd)

- ✓ Does the time, age, frequency and severity of the conviction record affect the person's suitability for employment?
- ✓ Consider info on good conduct and rehabilitation produced by the individual on their behalf.





# Penalties

During the interim period, penalties may be waived if employer can demonstrate best practices in good faith.

For cases where violations are willful, penalties will be deferred until administrative rules are in place, to allow for due process.





# Records



# Conditional Offer

After making a conditional offer, the employer may require applicant to provide information on pending criminal cases or criminal history.

Be sure to review conviction records and consider the type of offense, time elapse, age of the person, frequency, severity, subsequent good conduct/rehabilitation.



# Conditional Offer

## (cont'd)

If final decision is to withdraw conditional offer, make sure to provide applicant proper Statement of Denial and recruitment records within 30 calendar days.

Retain all documents related to the hiring process, including notes from interview, job description, applications and information provided by the applicant.



# Easily Avoided Costly Mistakes

- ❑ Be aware of job advertisement – attention to detail/reviewed by HR Manager.
- ❑ Avoid asking for Police and Court Clearance before or during interviews.
- ❑ Be sure that any rescinded conditional employment offer is for legitimate business reason.



# Easily Avoided Costly Mistakes (cont'd)

- ❑ Maintain records, evidence, and documents related to decision making on a conditional employment offer.
- ❑ Develop a clear concise Statement of Denial for cases where a conditional offer is withdrawn.
  - Have a clear policy on how and when Statement of Denial is delivered to applicant
  - Advise the applicant the opportunity to file a complaint with GDOL FEPD





# Scenarios



# Scenario #1



## Warehouse Driver

Bruce Wayne, age 29, applied for a warehouse driver at Isla Wholesaler. He meets all job requirements. Bruce was interviewed and selected, contingent upon submission of police and court clearances.

Records revealed that Bruce was convicted 10 years before for felony theft and forgery. No recent criminal violations occurred since the past conviction.

Applicant has provided extensive documents related to his rehabilitation & good conduct.

Isla Wholesaler decides to withdraw their conditional job offer based on Bruce's criminal history, citing the concern about potential costly losses in their warehouse.

**Question:** Does the employer have a legitimate business reason to rescind applicants job offer?





# Scenario #2



## Laborer

Islander Construction has placed a newspaper Ad, seeking construction laborers.

Peter Parker, age 49, submitted his application with the office clerk and was scheduled for an interview with the boss. The office manager told him to get a Police clearance and bring it to the interview.

At the interview, the employer reviews the police clearance (showing no record) and asks if he was ever convicted of anything. Peter tells employer that he was convicted only once for drugs 15 years ago and only got 6 months probation.

Employer decided not to hire Peter because of his conviction.

**Question:** Is the employer in compliance with FCHPA?



# Scenario #3

## Private Security Guard

TOKA 24/7 Security Service Agency placed Ad for Security Guard requiring police and court clearance upon submission of application. Tony Starks, age 57 applies for the position and includes his police and court clearance documents.

He has been out of prison for seven years for a felony Tax Evasion conviction.

To Tony's surprise, the Operations Manager informed him that he was not selected for an interview and is not hired.

**Question:** Did the Operations manager comply with the law?



# Scenario #4



## Gardener

Kal-EI, applied for a Gardener position at the Local Mowtion landscaping company.

Upon finding out that his conditional offer was terminated on Nov. 9, 2017; Kal-EI made a request from the company to provide all information and records relating his application process.

In response, Local Mowtion provided a written statement of denial dated Dec. 11, 2017; in it's letter they failed to explain why the conditional offer was withdrawn.

**Question:** Did the employer comply with the requirements of the law?



# Scenario #5



## Accounting Technician

Lois Lane, is applying for an Accounting Technician position for Einstein Accounting Firm.

On Einstein's Job Ad posting it reads: Only female preferred, Japanese or Korean need apply, police and court clearances required.

Lois Lane received a Graduate degree in Accounting.

During her interview, Accounting Manager with Einstein Accounting Firm asked if she had any prior criminal history before they begin the interview because she failed to check mark the box, on the application, that reads 'convicted of a felony'.

**Question:** Did Einstein Accounting Firm comply with the law?





## Summary

- ✓ Effective Date
- ✓ Interim Enforcement
- ✓ Government Process
- ✓ Interim Best Practices
- ✓ Records
- ✓ Easily avoided costly mistakes
- ✓ Scenarios



# RESOURCES



- EEOC Website ([www.eeoc.gov](http://www.eeoc.gov))
- EEOC Enforcement Guidance ([https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm) )
- 34<sup>th</sup> Guam Legislature ([http://www.guamlegislature.com/34th\\_public\\_laws.htm](http://www.guamlegislature.com/34th_public_laws.htm))
- Guam Compilers of Law (<http://www.guamcourts.org/compileroflaws/gar.html>)



# CONTACT INFORMATION

## Fair Employment Practice Division



414 West Soledad Avenue  
Suite 401, GCIC Building  
Hagåtña, Guam 96910



(671) 300-4544/45  
or 475-7037



(671) 475-6811



[dol.guam.gov](http://dol.guam.gov)  
<http://dol.guam.gov/compliance/fepa/>





# THANK YOU!

