

Fair Chance Hiring: Application of the Occupational Health & Safety Act

By Jesse Elders

Employers can implement Fair Chance Hiring processes and maintain compliance with Ontario's *Occupational Health and Safety Act* ("OHSA").

Fair Chance Hiring is a commitment to fairly assess job candidates with a criminal record. It asks that employers assess each job on an individual basis to determine an appropriate level of screening and recognizes that a criminal record check is unnecessary for most positions.

Employers are responsible for maintaining safe workplaces under the *OHSA*. The *OHSA* is provincial legislation that sets minimum standards for the health and safety of workplaces in the province. The *OHSA* imposes duties on employers, supervisors, and workers, among others, to ensure the health and safety of all workers, enforced by a regime for complaints, prosecution, and penalties.

The *OHSA* does not require a criminal record check as a pre-hiring screening tool for every job. There is no explicit requirement under the *OHSA* for employers to conduct a criminal record check. Moreover, adjudicators have never interpreted one of the broadest duties under the *OHSA* – the duty to “take every precaution reasonable in the circumstances for the protection of a worker” (s. 25(2)(h)) – to require criminal record checks in a hiring process. In fact, the Ministry of Labour has produced interpretive guidance for the *OHSA*, which states criminal record checks are not required by the legislation.¹

In most cases, criminal record checks will be unnecessary to ensure the health and safety of the workplace. That said, in some cases, it may be necessary where, for example, the position involves unsupervised contact

¹ See Section 2.6 “Information about a person with a history of violent behaviour”: <https://www.ontario.ca/page/understand-law-workplace-violence-and-harassment>.

with individuals in the vulnerable sector and/or where the position involves unsupervised access to or control over potentially harmful information or resources. Even then, the screening tool and decisions made in reliance on that tool should be appropriate and relevant to the specific position.

Some employers have asked how to handle complaints from workers who express a concern about safety when working with a colleague who has a criminal record. Employers have a duty to investigate any complaint regarding workplace safety, but where there is no specific evidence that safety is compromised, employers should respond to these complaints with additional workplace training and mentorship aimed at destigmatizing criminal records and fostering an inclusive workplace.



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