

New York City Commission on Human Rights

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The New York City Commission on Human Rights (the “Commission”) is proposing to amend its rules governing employment discrimination based on criminal history.

When and where is the hearing? The Commission will hold a virtual public hearing on the proposed rule. The public hearing will take place at 11:00am on Thursday, September 5, 2024, and will be accessible by phone and videoconference.

To participate in the public hearing via phone, please dial +1 646-893-7101.

- Phone conference ID: 297 976 496#

To participate in the public hearing via videoconference, please register at the online link:

- <https://events.gcc.teams.microsoft.com/event/ede84e09-a790-4ebb-85d5-1ad4a492786b@32f56fc7-5f81-4e22-a95b-15da66513bef>

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Commission through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to policy@cchr.nyc.gov. Please include a reference in the subject line to “Proposed Rules on Employment Discrimination Based on Criminal History.”
- **Mail.** You can mail comments to Office of the Chair, New York City Commission on Human Rights, 22 Reade Street, New York, New York 10007.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing at 11:00am on Thursday, September 5, 2024, by emailing policy@cchr.nyc.gov. While there will be an opportunity during the hearing to indicate that you would like to comment, it is recommended that you sign up in advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit comments? You must submit written comments by Wednesday, September 4, 2024, by 11:59pm EST.

What if I need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us in advance if you need a sign language interpreter. You can email us at policy@cchr.nyc.gov. You may also tell us by

telephone at (212) 416-0218. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Thursday, August 29, 2024.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all submitted comments and a transcript of the hearing will be available to the public at the Commission’s website.

What authorizes the Commission to make this rule? Sections 905 and 1043 of the New York City Charter authorize the Commission to make this proposed rule.

Where can I find the Commission’s rules? The Commission’s rules are in title 47 of the Rules of the City of New York.

What laws govern the rulemaking process? The Commission must meet the requirements of section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The New York City Commission on Human Rights (“the Commission”) is proposing to amend its rules concerning prohibitions on employment discrimination based on criminal history to account for amendments to the Human Rights Law pursuant to Local Law 4 of 2021, in addition to other clarifying changes.

The proposed rules amend portions of Chapter 1 of Title 47 of the Rules of the City of New York to (i) clarify when party signatures are required and (ii) streamline the complaint filing process and clarify when service may be made by email.

The proposed rules also amend portions of Chapter 2 of Title 47 of the Rules of the City of New York. The proposed rules will amend section 2-01 to update some existing definitions and to add several others. In addition, the proposed rules amend section 2-03 to reflect more fully the process under the NYC Human Rights Law for places of public accommodation that request exemptions from the prohibition against gender-based discrimination.

The rules also amend section 2-04 to address key changes to the Human Rights Law, including but not limited to:

- (i) extending from 3 to 5 business days the time that employers, employment agencies, and their agents must allow job applicants to respond to a Fair Chance Employment Analysis of their criminal history;
- (ii) adding new protections for people with certain types of cases, including pending criminal cases, unsealed violations, unsealed non-criminal offenses, and adjournments in contemplation of dismissal;
- (iii) adding new Fair Chance Employment protections for current employees; and

- (iv) removing the early resolution process for Commission-initiated Fair Chance Employment complaints to make the enforcement of Fair Chance Employment protections consistent with that of other protections under the Human Rights Law and reflect that the Law has been in effect for a significant amount of time.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Subdivisions (d) and (f) of section 1-04 of Title 47 of the Rules of the City of New York are amended to read as follows:

§ 1-04 Service of Papers.

(d) *Methods of service.*

(1) *Papers other than subpoenas.* A paper other than a subpoena is served under this rule by:

(i) handing it to the person;

(ii) mailing it to the person's last known address, unless the serving party has reason to know that the person to be served no longer resides there. Service by mail is effective:

i. five days from the date of mailing, if sent by first class mail.

ii. one day from the date of mailing, if sent by overnight delivery.

iii. for purposes of calculating deadlines for filing in state court, on the date of mailing. For example, the deadline for filing an appeal in state court should be calculated from the date of mailing of the decision that is the subject of the appeal.

(iii) leaving it:

i. at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

ii. if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(iv) sending it by email or facsimile, provided that either the person is represented by counsel and the papers are served on the attorney, the person provided their complaint to the Commission via email or facsimile, or the person has provided written consent to such service

pursuant to 47 RCNY § 1-04(f). Service by email or facsimile is complete at the time of transmission, but is not effective if the serving party learns that it did not reach the person to be served;

(v) for service on corporations or other business entities, mailing it to the person registered with the New York State Department of State to receive service on behalf of the corporation or business entity or by serving the New York Department of State in accordance with applicable law; or

(vi) if no other method of service is effective, as specified in an order by the Chair.

(2) *Subpoenas*. A subpoena must be served in the manner provided for in the New York Civil Practice Law and Rules ("CPLR").

(f) *Consent to email or facsimile service*. An unrepresented party who consents to service by email or facsimile must provide written notice to all other parties, including the case name, case number, and the email address or facsimile number through which the party consents to accept service. Written consent to service by email or facsimile will remain in effect unless the consenting party provides unambiguous notice that consent is being withdrawn. Counsel appearing on behalf of a party are presumed to have consented to service by email, absent an express statement to the contrary. The requirements of this paragraph are waived for persons who consent to email service or facsimile service by filing a complaint via email or facsimile.

§ 2. Subdivisions (c) and (d) of section 1-11 of Title 47 of the Rules of the City of New York are amended to read as follows:

§ 1-11 Complaints Generally.

(c) *Contents of complaint*. A complaint must contain the following:

(1) the full name and address of the person or persons making the complaint or such other designation as appropriate. Each such person is denominated a complainant. If a complaint is prepared by a complainant's attorney, the attorney's name, address, telephone number, email address, and facsimile number, if any, should also appear on the complaint;

(2) the full name and address, where known, of the person or persons alleged to have committed an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling. Each such person is denominated a respondent;

(3) a plain and concise statement of the specific facts constituting the alleged violation of the Code, set forth in consecutively numbered paragraphs. The statement of facts must contain, to the extent known to the complainant, the exact or approximate date or dates of the alleged discriminatory practices and, if the alleged violation of the Code is of a continuing nature, the

dates between which that violation is alleged to have occurred; and the addresses or approximate locations of any places where the acts complained of are alleged to have occurred; [and]

(4) whether complainant has previously filed any other civil or administrative action alleging an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling with respect to the allegations that are the subject of the complaint. In the event of a prior filing, a statement of the title, docket number, or similar identifying number, and forum before which such other claim was filed, and a statement of the status or disposition of such other action or proceeding should be included[.]; and

(5) the signatures of the complainant(s).

(d) *What constitutes filing of a complaint or answer.* A signed, verified complaint or answer is filed when it is mailed to or personally served on the Law Enforcement Bureau, or emailed to an email address that is made publicly available for this purpose by the Commission. A verified complaint or answer is a complaint or answer that is notarized or that includes a signed affirmation that states: “I affirm this day of , , under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in a legal action or proceeding.”

(e) *Procedure following receipt of complaint.* Consistent with 47 RCNY § 1-11(a)(1), when a complaint is filed, the Law Enforcement Bureau must record the date of filing and assign a complaint number to the complaint. The Law Enforcement Bureau must thereafter serve a copy of the filed complaint to each respondent and necessary party and must advise the respondents of their procedural rights and obligations.

§ 3. Subdivision (a) of section 1-23 of Title 47 of the Rules of the City of New York is amended to read as follows:

(a) *Timing.* Within 30 days of service of the notice of dismissal, a notice of appeal must be mailed or hand delivered to the Office of the Chair, or emailed to an email address made publicly available for this purpose by the Commission, and must be served on all other parties. A request for extension of the time to file a notice of appeal must be submitted in writing to the Office of the Chair, with copies to all other parties, and will only be granted for good cause. Untimely appeals will be dismissed, unless good cause for delay is shown.

Section 4. Section 2-01 of Title 47 of the Rules of the City of New York is amended to read as follows:

§ 2-01 Definitions.

For purposes of this chapter,

Adverse employment action. “Adverse employment action” refers to any action that negatively affects the terms and conditions of employment, except as provided in 47 RCNY § 2-04(e)(1)(vii).

Applicant. “Applicant” refers to [persons] a person seeking initial employment[,and] or a current [employees] employee who [are] is seeking or being considered for [promotions] promotion or [transfers] transfer.

[*Article 23-A analysis.* “Article 23-A analysis” refers to the process required under subdivisions 9, 10, 11, and 11-a of Section 8-107 of the Administrative Code to comply with Article 23-A of the New York Correction Law.]

Article 23-A factors. “Article 23-A factors” refers to the following factors that employers, employment agencies, or their agents must consider concerning applicants’ and employees’ pre-employment conviction histories under [Section] § 753 of Article 23-A of the New York [correction law] Correction Law:

1. that New York public policy encourages the licensure and employment of people with criminal records;
2. the specific duties and responsibilities necessarily related to the prospective job;
3. the bearing, if any, of the conviction history on the applicant’s or employee’s fitness or ability to perform one or more of the job’s duties or responsibilities;
4. the time that has elapsed since the occurrence of the criminal offense that led to the applicant’s or employee’s criminal conviction, not the time since arrest or conviction;
5. the age of the applicant or employee when the criminal offense that led to their conviction occurred;
6. the seriousness of the applicant’s or employee’s conviction;
7. any information produced by the applicant or employee, or produced on the applicant’s or employee’s behalf, regarding their rehabilitation and good conduct;
8. the legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public.

Business day. “Business day” means any day except for Saturdays, Sundays, and all legal holidays of the City of New York.

Childbirth. “Childbirth” refers to labor or childbirth, whether or not it results in a live birth.

Cisgender. “Cisgender” is a term used to describe a person whose gender identity conforms with their sex assigned at birth.

Commission. “Commission” means the New York City Commission on Human Rights.

Conditional offer of employment. “Conditional offer of employment,” [as used in § 8-107(11-a) of the Administrative Code and 47 RCNY § 2-04 for purposes of establishing when an applicant’s criminal history can be considered by an employer, refers to] means an offer of employment, promotion or transfer [.A conditional offer of employment can] that may only be revoked based on one of the following:

1. The results of a criminal background check[,] and [only after]in compliance with the "Fair Chance Employment Process[,]" [as defined in this section, has been followed].
2. The results of a medical exam as permitted by the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§12101]12112 [et seq].
3. Other information the employer, employment agency, or their agent could not have reasonably

known before making the Conditional offer of employment if [, based on the information,] the employer employment agency, or their agent can show as an affirmative defense that, based on the information, it would not have made the offer [and the employer can show the information is material] regardless of the results of the criminal background check.

For temporary help firms, a Conditional offer of employment is the offer to place an applicant in the firm's labor pool, which is the group of individuals from which the firm selects candidates to send for job opportunities.

Consumer credit history. "Consumer credit history" is an individual's credit worthiness, credit standing, credit capacity, or payment history, as indicated by (i) a consumer credit report, which shall include any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity or credit history; (ii) a consumer's credit score; or (iii) information an employer obtains directly from the individual regarding (a) details about credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, debt collection lawsuits, nonpayment lawsuits, items in collections, credit limit, prior credit report inquiries, or (b) bankruptcies, judgments, or liens.

Consumer reporting agency. "Consumer reporting agency" is a person or entity that provides reports containing information about an individual's credit worthiness, credit standing, credit capacity, or payment history. A consumer reporting agency includes any person or entity that, for monetary fees, dues, or on a cooperative nonprofit basis, engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information about consumers for the purpose of furnishing consumer reports or investigative consumer reports to third parties. A person or entity need not regularly engage in assembling and evaluating consumer credit history to be considered a consumer reporting agency.

Conviction history. "Conviction history" refers to records of an individual's conviction of a felony[,] or misdemeanor[, or unsealed violation] as defined by New York law₂ [or] federal law[,] or the law of the state in which the individual was convicted.

Cooperative dialogue. "Cooperative dialogue" refers to the process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person's accommodation needs; potential accommodations that may address the person's accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the covered entity.

Criminal background check. "Criminal background check" refers to when [an employer, employment agency or agent thereof orally or in writing] a covered entity:

1. Asks [a] an [person] individual, orally or in writing, [whether or not] if they have a criminal record; or
2. Searches [for] publicly available records, including through a third party, such as a consumer reporting agency, [the Internet, or] private database[s], or website, for [a person's] information about an individual's criminal history; or

3. Otherwise gathers records or information relating to an individual’s criminal history.

Criminal history. “Criminal history” [refers to records of an individual’s convictions, unsealed violations, non-convictions, and/or currently pending criminal case(s)] includes a person’s conviction history, non-convictions, and pending cases.

Domestic partners. “Domestic partners” means persons who have a registered domestic partnership, which shall include any partnership registered pursuant to chapter 2 of Title 3 of the [Administrative] Code, any partnership registered in accordance with executive order number 123, dated August 7, 1989, and any partnership registered in accordance with executive order number 48, dated January 7, 1993, and persons who are members of a marriage that is not recognized by the state of New York, a domestic partnership, or a civil union, lawfully entered into in another jurisdiction.

Employer. “Employer” refers to an employer as defined by [section 8-102(5)] § 8-102 of the [Administrative] Code.

Fair Chance Employment Analysis. “Fair Chance Employment Analysis” refers to the steps for evaluating:

1. An applicant’s or employee’s convictions that occurred prior to the start of their employment using the Article 23-A factors; or

2. An applicant’s pending cases that occurred prior to their application for employment or an employee’s pending cases or convictions that occur during employment using the New York City Fair Chance Employment Factors.

Fair Chance Employment Process. “Fair Chance Employment Process” refers to the [postconditional offer] process mandated by [§ 8-107(11-a)]§ 8-107(11-a)(b) of the [Administrative]Code when [employers] an employer, employment agency, or agent thereof [elect]is considering whether to withdraw a conditional offer of employment or deny a promotion or transfer based on an applicant's arrest or conviction[history] record or the process mandated by § 8-107(11-a)(c) of the code when an employer, employment agency, or agent thereof is considering taking any adverse employment action against a current employee based on an employee’s criminal conviction or pending cases.

Gender. “Gender” includes actual or perceived sex, gender identity, and gender expression including a person’s actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth.

Gender expression. “Gender expression” is the representation of gender as expressed through one’s name, pronouns, clothing, hairstyle, behavior, voice, or similar characteristics. Gender expression may or may not conform to gender stereotypes, norms, and expectations in a given culture or historical period. Terms associated with gender expression include, but are not limited to, androgynous, butch, female/woman/feminine, femme, gender non-conforming, male/man/masculine, or non-binary.

Gender identity. “Gender identity” is the internal deeply-held sense of one’s gender which may

be the same as or different from one's sex assigned at birth. A person's gender identity may be male, female, neither or both, i.e., non-binary. Terms associated with gender identity include, but are not limited to, agender, bigender, female/woman/womxn/feminine, female to male (FTM), gender diverse, gender fluid, gender queer, male/man/masculine, male to female (MTF), man of trans experience, pangender, or woman of trans experience.

Gender non-conforming. "Gender non-conforming" is a term used to describe a person whose gender expression differs from gender stereotypes, norms, and expectations in a given culture and historical period. Terms associated with gender non-conforming include, but are not limited to, androgynous, gender expansive, gender variant, or gender diverse.

High degree of public trust. "High degree of public trust" as used in 47 RCNY § 2-05 refers only to the following City agency positions: (i) agency heads and directors; (ii) Commissioner titles, including Assistant, Associate, and Deputy Commissioners; (iii) Counsel titles, including General Counsel, Special Counsel, Deputy General Counsel, and Assistant General Counsel, that involve high-level decision-making authority; (iv) Chief Information Officer and Chief Technology Officer titles; and (v) any position reporting directly to the head of an agency.

Human Rights Law. "Human Rights Law" refers to Title 8 of the [Administrative] Code.

Intelligence information. "Intelligence information" means records and data compiled for the purpose of criminal investigation or counterterrorism, including records and data relating to the order or security of a correctional facility, reports of informants, investigators or other persons, or from any type of surveillance associated with an identifiable individual, or investigation or analysis of potential terrorist threats.

Inquiry. "Inquiry," when used in [connection with criminal history] 47 RCNY § 2-04, refers to any oral or written question asked for the purpose of obtaining a person's criminal history, including without limitation, questions in a job interview about an applicant's criminal history[,] and any search for a person's criminal history, including through the services of a third party, such as a consumer reporting agency.

Intersex. "Intersex" is a term used to refer to a person whose sex characteristics (chromosomes, hormones, gonads, genitalia, etc.) do not conform with a binary construction of sex as either male or female.

Lactation room. "Lactation room" refers to a sanitary place, other than a restroom, that can be used to express breast milk shielded from view and free from intrusion and that includes at minimum an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water.

Licensing agency. "Licensing agency" refers to any agency or employee thereof that is authorized to issue any certificate, license, registration, permit or grant of permission required by the law of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business or profession.

Members. "Members" means individuals belonging to any class of membership offered by the institution, club, or place of accommodation including, but not limited to, full membership, resident membership, nonresident membership, temporary membership, family membership,

honorary membership, associate membership, membership limited to use of dining or athletic facilities, and membership of members' minor children or spouses or domestic partners.

National security information. “National security information” means any knowledge relating to the national defense or foreign relations of the United States, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States government and is defined as such by the United States government and its agencies and departments.

New York City Fair Chance Employment Factors. “New York City Fair Chance Employment Factors” refers to the factors that employers, employment agencies, or their agents must consider before making an employment decision, in regard to applicants, based on pending cases at the time of their application for employment and, in regard to employees, based on pending cases during employment or convictions that occur during employment. These factors are:

1. the policy of the city to overcome stigma toward and unnecessary exclusion of persons with criminal justice involvement in the areas of licensure and employment;
2. the specific duties and responsibilities necessarily related to the employment held by the person;
3. the bearing, if any, of the criminal offense or offenses for which the applicant was convicted, or that are alleged in the case of pending arrests or criminal accusations, on the applicant’s fitness or ability to perform one or more such duties or responsibilities;
4. whether the person was 25 years of age or younger at the time of occurrence of the criminal offense or offenses for which the person was convicted, or that are alleged in the case of pending arrests or criminal accusations;
5. the seriousness of such offense or offenses;
6. 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; and
7. any additional information produced by the applicant, or produced on their behalf, in regards to their rehabilitation or good conduct, including history of positive performance and conduct on the job or in the community, or any other evidence of good conduct.

Non-binary. “Non-binary” is a term used to describe a person whose gender identity is not exclusively male or female. For example, some people have a gender identity that blends elements of being a man or a woman or a gender identity that is neither male nor female.

Non-conviction. “Non-conviction” means: [any arrest or criminal accusation, not currently pending,]

1. a criminal action that has been adjourned in contemplation of dismissal pursuant to § 170.55, § 170.56, § 210.46, § 210.47, or § 215.10 of the New York Criminal Procedure Law, provided that if the order to adjourn in contemplation of dismissal is revoked and the case is restored to the calendar for further prosecution, the criminal action is treated as a “pending case” and is no longer a “non-conviction”; or

2. a criminal action that is not currently pending and that was concluded in one of the following ways:

- [1.] a. Termination in favor of the individual, as defined by [New York Criminal Procedure Law (“CPL”) Section] Criminal Procedure Law § 160.50, even if not sealed;

[2.] b. Adjudication as a youthful offender, as defined by [CPL Section] Criminal Procedure Law § 720.35(1), even if not sealed or marked confidential;

[3.] c. Conviction of a [non-criminal offense that has been sealed under CPL Section 160.55] violation, as defined in Penal Law § 10.00, even if not sealed; or

[4.] d. [Convictions] Conviction that [have] has been sealed under [CPL Section] Criminal Procedure Law § 160.58 or § 160.59.

3. “Non-conviction” includes a disposition of a criminal matter under federal law or the law of another state that results in a status comparable to a “non-conviction” under New York law as defined in this section.

Payment directly from a nonmember. “Payment directly from a nonmember” means payment made to an institution, club or place of accommodation by a nonmember for expenses incurred by a member or nonmember for dues, fees, use of space, facilities, services, meals or beverages.

Payment for the furtherance of trade or business. “Payment for the furtherance of trade or business” means payment made by or on behalf of a trade or business organization, payment made by an individual from an account which the individual uses primarily for trade or business purposes, payment made by an individual who is reimbursed for the payment by the individual's employer or by a trade or business organization, or other payment made in connection with an individual's trade or business, including entertaining clients or business associates, holding meetings or other business-related events.

Payment indirectly from a nonmember. “Payment indirectly from a nonmember” means payment made to a member or nonmember by another nonmember as reimbursement for payment made to an institution, club or place of accommodation for expenses incurred for dues, fees, use of space, facilities, meals or beverages.

Payment on behalf of a nonmember. “Payment on behalf of a nonmember” means payment by a member or nonmember for expenses incurred for dues, fees, use of space, facilities, services, meals or beverages by or for a nonmember.

Pending case. A criminal accusation or an arrest based on a criminal accusation that has not yet been adjudicated to a verdict or dismissed at the time of the Fair Chance Employment Analysis conducted by an employer, employment agency, or their agent. An action that has been adjourned in contemplation of dismissal shall not be considered a pending case unless, prior to the time the Fair Chance Employment Analysis is conducted by an employer, employment agency, or their agent, the order to adjourn in contemplation of dismissal is revoked and the case is restored to the calendar for further prosecution.

Per se violation. “Per se violation” refers to an action or inaction that, standing alone, without reference to additional facts, constitutes a violation of Title 8 of the [Administrative] Code, regardless of whether any adverse employment action was taken or any actual injury [was incurred] occurred.

Pregnancy. “Pregnancy” refers to being pregnant, and symptoms of pregnancy, including, without limitation, nausea, morning sickness, dehydration, increased appetite, swelling of extremities, and increased body temperature.

Public agency. “Public agency” refers to the state or any local subdivision thereof, or any state or local department, agency, board, or commission.

Regular meal service. "Regular meal service" means the provision, either directly or under a contract with another person, of breakfast, lunch, or dinner on three or more days per week during two or more weeks per month during six or more months per year.

Regularly receives payment. An institution, club or place of accommodation "regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of nonmembers for the furtherance of trade or business" if it receives as many such payments during the course of a year as the number of weeks any part of which the institution, club or place of accommodation is available for use by members or [non members] nonmembers per year.

Related medical condition. "Related medical condition" refers to any medical condition that is related to or caused by pregnancy or childbirth or the state of seeking to become pregnant, including, without limitation, infertility, gestational diabetes, pregnancy-induced hypertension, hyperemesis, preeclampsia, depression, miscarriage, lactation, and recovery from childbirth, miscarriage, and termination of pregnancy.

Sex. "Sex" is a combination of several characteristics, including but not limited to, chromosomes, hormones, internal and external reproductive organs, facial hair, vocal pitch, development of breasts, and gender identity.

Sexual or reproductive health decisions. "Sexual or reproductive health decisions" refers to any decision by an individual to receive or not to receive services, which are arranged for or offered or provided to individuals relating to sexual or reproductive health, including the reproductive system and its functions. Such services include, but are not limited to, fertility-related medical procedures, sexually transmitted disease prevention, testing, and treatment, and family planning services and counseling, such as birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, and abortion.

Statement. "Statement," when used in [connection with criminal history] 47 RCNY § 2-04, refers to any communications made, orally or in writing, to a person for the purpose of obtaining criminal history, including, without limitation, stating that a background check is required for a position.

Stop Credit Discrimination in Employment Act. "Stop Credit Discrimination in Employment Act" refers to Local Law No. 37 of 2015, codified in [Sections] §§ 8-102[(29)] and 8-107(9)(d), (24) of the[Administrative] Code[of the City of New York].

Temporary help firms. "Temporary help firms" are businesses that recruit, hire, and assign their own employees to perform work or services for other organizations, to support or supplement the other organization's workforce, or to provide assistance in special work situations such as, without limitation, employee absences, skill shortages, seasonal workloads, or special assignments or projects.

Terms and conditions. "Terms and conditions" means conditions of employment, including but not limited to hiring, termination, transfers, promotions, privileges, compensation, benefits, professional development and training opportunities, and job duties.

Trade secret. "Trade secret" means information that: (i) derives significant independent

economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, both within the workplace and in the public; and (iii) can reasonably be said to be the end product of significant innovation. The term “trade secret” does not include general proprietary company information such as the information contained in handbooks and policies. The term “regular access to trade secrets” does not include access to or the use of client, customer, or mailing lists or other information regularly collected in the course of business. In considering whether information constitutes a trade secret for the purposes of an exemption under § 8-107(24)(b)(2)(E) of the [administrative code] Code, the Commission will consider various factors, including: (1) efforts made by the employer to protect and develop such information for the purpose of increasing competitive advantage; (2) whether the information was regularly shared with entry level and non-salaried employees and supervisors or managers of such employees; (3) what efforts would be required to replicate such information by someone knowledgeable within the field; (4) the value of the information to competitors; and (5) the amount of money and effort expended by the employer to develop the information.

Transgender. “Transgender”—sometimes shortened to “trans”—is a term used to describe a person whose gender identity does not conform with the sex assigned at birth.

Section 5. Section 2-03 of Title 47 of the Rules of the City of New York is amended to read as follows:

§ 2-03 Exemption of Certain Places of Public Accommodations in Relation to Sex Discrimination.

(a) Dressing rooms, toilets and shower rooms containing multiple facilities, and appurtenant rooms and facilities, and [turkish] Turkish baths and saunas, shall be exempt from the provisions of [§ 8-107, Paragraph 2*] § 8-107(4)(a) of the [Administrative] Code insofar as the use of such accommodations is restricted to one sex. This exemption shall not apply to swimming pools and other facilities for swimming.

(b) Rooming houses or residence hotels in which rental is restricted to one sex shall be exempt from the provisions of [§ 8-107, Paragraph 2*] § 8-107(4)(a) of the [Administrative] Code if such accommodation is regularly occupied on a permanent, as opposed to transient, basis by the majority of its guests.

(c) Lodging facilities in which the sleeping rooms and/or bathrooms are used in common, such as missions or dormitories designed for occupancy by members of the same sex, shall be exempt from the provisions of [§ 8-107, Paragraph 2*] § 8-107(4)(a) of the [Administrative] Code insofar as members of one sex are excluded from such accommodations.

(d) The owner, lessee, proprietor, manager, superintendent or agent of a place or provider of public accommodation may make an application pursuant to § 8-107(4)(b) of the Code for an exemption for a gender-based restriction on access to or services provided by such public accommodation. Such application must be made in writing to the office of the chairperson of the New York City Commission on Human Rights. The application must set forth the specific basis for the exemption sought together with any supporting evidence. The chairperson may grant such

exemption if, for example, they determine that the exemption promotes the health, safety or well-being of members of the public, or prevents undue disruption of the quiet enjoyment of a place of public accommodation and is not inconsistent with the goals and policies of the City Human Rights Law. The decision of the Chairperson shall be final.

Section 6. Section 2-04 of Title 47 of the Rules of the City of New York is amended to read as follows:

§ 2-04 Prohibitions on Discrimination Based on Criminal History

47 RCNY §§ 2-04(a) through 2-04(g) relate to prohibitions on discrimination in employment only. 47 RCNY § 2-04(h) relates to prohibitions on discrimination in licensing only. 47 RCNY § 2-04(i) relates to enforcement of violations of the Human Rights Law under this section in employment and licensing.

a) *Per Se Violations.* The Commission has determined that the following are per se violations of §§ 8-107(10), (11) or (11-a) of the [Human Rights Law] Code [(regardless of whether any adverse employment action is taken against an individual applicant or employee),] unless an exemption listed under subdivision (g) of this section applies:

(1) [Declaring, printing, or circulating, or causing the declaration, printing, or circulation of, any solicitation, advertisement, policy or publication that expresses, directly or indirectly, orally or in writing,] Prior to a conditional offer, expressing any [limitation or specification in employment] limitations or specifications regarding criminal history, including asserting that individuals with a criminal history, or individuals with certain convictions, will not be hired or considered. This includes [, but is not limited to, advertisements and employment applications containing phrases such as: “no felonies,” “background check required,” and “must have clean record.”] unsolicited statements about criminal background checks. Solicitations, advertisements, and publications may include affirmative encouragement for individuals with criminal records to apply.

(2) [Using applications for employment that require applicants to either grant employers permission to run a background check or provide information regarding criminal history prior to a conditional offer] Prior to a conditional offer, asking questions or seeking information about an applicant’s criminal history or pending cases prior to requesting authorization to perform a background check or criminal history check whether on an application or otherwise.

(3) [Making any] Prior to a conditional offer, [statement] statements or [inquiry] inquiries or actions seeking to discover information relating to [the] an applicant’s [pending arrest or] criminal history [conviction] whether oral or in writing [before a conditional offer of employment is extended]. This includes conducting any investigation into an applicant’s criminal history, including but not limited to the use of publicly available records or the Internet for the purpose of learning about an applicant’s criminal history, whether such investigations are conducted by an employer, employment agency, or their agent or for an employer, employment agency, or their agent by a third party. This also includes searching for terms such as “arrest,” “mugshot,” “warrant,” “criminal,” “conviction,” “jail,” or “prison” in connection with an applicant, or searching websites that purport to provide information

regarding arrests, warrants, convictions or incarceration information for the purpose of obtaining criminal history information about an applicant.

(4) Using [within the City a standard form, such as a boilerplate job application, intended to be used across multiple jurisdictions, that requests or refers to criminal history. Disclaimers or other language indicating that applicants should not answer specific questions if applying for a position that is subject to the Human Rights Law do not shield an employer from liability] forms or applications that contain a disclaimer, note exceptions, or note that applicants can skip certain questions related to criminal history are prohibited unless the specific language is required by any other federal, state or local law.

(5) Failing to [comply with requirements of § 8-107(11-a) of the Human Rights Law,] undertake any of the following obligations when they are applicable:

(i) the requirement to request from the employee or applicant information relating to the relevant Fair Chance Employment Factors;

([1] ii) the requirement to provide the applicant or employee a written copy of any inquiry an employer, employment agency, or their agent conducted into the applicant's criminal history;

([2] iii) the requirement to share with the applicant or employee a written copy of the employer's, employment agency's, or their agent's [Article 23-A analysis] Fair Chance Employment Analysis;

[or] ([3] iv.) the requirement to hold the prospective position open for at least [three] five business days from the date of an applicant's receipt of both the inquiry and analysis; or

(v.) the requirement to allow the employee a reasonable time to respond, which shall be at least five business days from the date of the employee's receipt of both the inquiry and analysis, before taking an adverse action based on the employee's criminal history.

(6) Requiring applicants to disclose an arrest that, at the time disclosure is required, is the subject of a non-conviction as defined in 47 RCNY § 2-01.

(7) Disqualifying an applicant for refusing to respond to any prohibited inquiry or statement about criminal history.

(8) Failing to comply with the requirements of § 8-107(10)(g) of the Code by taking adverse action against an applicant or employee based on an intentional misrepresentation about their conviction history or pending case without first providing the applicant a copy of the information that the employer, employment agency, or their agent is relying on as evidence of the intentional misrepresentation and reasonable time to respond.

(b) *Criminal Background Check Process.* An employer, employment agency, or agent thereof may not inquire about an applicant's criminal history or request permission to run a criminal background check until after the employer, employment agency, or agent thereof makes the applicant a conditional offer. At no point may an employer, employment agency, or agent thereof seek or consider information pertaining to [a] an applicant's non-conviction unless specifically

required by any other federal, state or local law, or unless otherwise exempt pursuant to § 2-04(g) of this chapter.

[(1) Employers, employment agencies, or agents thereof may not engage in any of the following actions prior to making a conditional offer to an applicant, unless otherwise exempt pursuant to § 2-04(f) of this chapter:

- (i) Seeking to discover, obtain, or consider the criminal history of an applicant before a conditional offer of employment is made.
- (ii) Expressing any limitation or specifications based on criminal history in job advertisements. This includes, but is not limited to, any language that states or implies “no felonies,” “background check required,” or “clean records only.” Solicitations, advertisements, and publications encompass a broad variety of items, including, but not limited to, employment applications, fliers, hand-outs, online job postings, and materials distributed at employment fairs and by temporary help firms and job readiness programs.
- (iii) Using an application that contains a question about an applicant’s criminal history or pending criminal case or requests authorization to perform a background check.
- (iv) Making any inquiry or statement related to an applicant’s criminal history, whether written or oral, during a job interview.
- (v) Asserting, whether orally or in writing, that individuals with a criminal history, or individuals with certain convictions, will not be hired or considered.
- (vi) Conducting investigations into an applicant’s criminal history, including but not limited to the use of publicly available records or the Internet for the purpose of learning about the applicant’s criminal history, whether such investigations are conducted by an employer or for an employer by a third party.
- (vii) Disqualifying an applicant for refusing to respond to any prohibited inquiry or statement about criminal history.
- (viii) In connection with an applicant, searching for terms such as, “arrest,” “mugshot,” “warrant,” “criminal,” “conviction,” “jail,” or “prison” or searching websites that purport to provide information regarding arrests, warrants, convictions or incarceration information for the purpose of obtaining criminal history.]

(c) *Inadvertent Discovery or Unsolicited Disclosure of Criminal History Prior to Conditional Offer of Employment.* Inadvertent discovery by an employer, employment agency, or agent thereof or unsolicited disclosure by an applicant of criminal history prior to a conditional offer [of employment] does not automatically create employer liability. Liability is created when an employer, employment agency, or agent thereof uses the discovery or disclosure to further explore an applicant’s criminal history before having made a conditional offer or uses the information in determining whether to make a conditional offer.

(d) *Information Regarding Conviction History and Pending Cases Obtained After a Conditional Offer of Employment.* After an employer, employment agency, or agent thereof extends a conditional offer to an applicant, an employer, employment agency, or agent thereof may make inquiries into or statements about the applicant’s conviction history and pending case(s). An employer, employment agency, or agent thereof may (1) ask, either orally or in writing, whether an applicant has a criminal conviction history or pending case(s); (2) run a background check or, after receiving the applicant’s permission and providing notice, use a consumer reporting agency to do so; and (3) once an employer, employment agency, or agent thereof knows about an

applicant's conviction history or pending case(s), ask them about the circumstances that led to the conviction or pending case and gather information relevant to the [Article 23-A factors] Fair Chance Employment Analysis. Upon receipt of the results of an applicant's [conviction history] criminal background check, an employer, employment agency, or agent thereof may [elect] proceed to hire the individual. If the employer, employment agency, or agent thereof does not wish to withdraw the conditional offer, the employer, employment agency, or agent thereof does not need to engage in the [Article 23-A analysis] Fair Chance Employment Analysis.

(e) *Withdrawing a Conditional Offer of Employment or Taking an Adverse Employment Action.* Should an employer, employment agency, or agent thereof wish to withdraw its conditional offer of employment or take an adverse employment action based on an applicant's [or employee's] conviction history or pending case(s), the employer, employment agency, or agent thereof must (1) engage in [an Article 23-A analysis] the Fair Chance Employment Analysis[,] and (2) follow the Fair Chance Employment Process. Employers, employment agencies, or agents thereof must affirmatively request information relating to the Fair Chance Employment Analysis before engaging in the [Article 23-A analysis] Fair Chance Employment Analysis.

(1) [Article 23-A analysis] Fair Chance Employment Analysis.

(i) An employer, employment agency, or agent thereof must consider the [following factors] Article 23-A Factors in evaluating the pre-employment conviction history of an applicant or employee [under the Article 23-A analysis:

- (A) That New York public policy encourages the licensure and employment of people with criminal records;
- (B) The specific duties and responsibilities necessarily related to the prospective job;
- (C) The bearing, if any, of the conviction history on the applicant's or employee's fitness or ability to perform one or more of the job's duties or responsibilities;
- (D) The time that has elapsed since the occurrence of the criminal offense that led to the applicant's or employee's criminal conviction, not the time since arrest or conviction;
- (E) The age of the applicant or employee when the criminal offense that led to their conviction occurred;
- (F) The seriousness of the applicant's or employee's conviction;
- (G) Any information produced by the applicant or employee, or produced on the applicant's or employee's behalf, regarding their rehabilitation and good conduct;
- (H) The legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public].

(ii) An employer, employment agency, or agent thereof must consider the New York City Fair Chance Employment Factors in evaluating the pending cases of an applicant and the pending case or conviction of an employee that occurs during employment, unless an exemption pursuant to subdivision (g) of this section applies.

(iii) When [considering] performing the [factors outlined above] Fair Chance Employment Analysis, a presumption of rehabilitation exists when an applicant or employee produces a certificate of relief from disabilities or a certificate of good conduct.

[(iii)] (iv) An employer, employment agency, or agent thereof may not change the duties and responsibilities of a position because it learned of an applicant's or employee's conviction history, except as provided in subdivision (e)(2)(v) of this section.

[(iv)] (v) After evaluating the factors in subdivision [(e)(1)(i)] (e)(1) of this section, an employer, employment agency, or agent thereof must then determine whether (1) there is a "direct relationship" between the applicant's or employee's conviction history or pending case and the prospective or current job, or (2) employing or continuing to employ the [applicant] person would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

(A) To claim the ["direct relationship exception,"] "direct relationship" exception, an employer, employment agency, or agent thereof must first draw some connection between the nature of the conduct that led to the [conviction(s)] conviction or pending case and the position. If a direct relationship exists, the employer, employment agency, or agent thereof must evaluate the [Article 23-A factors]relevant New York City Fair Chance Employment Factors, as that term is defined in 47 RCNY § 2-01, to determine whether the concerns presented by the relationship have been mitigated.

(B) To claim the ["unreasonable risk exception,"] "unreasonable risk" exception, an employer, employment agency, or agent thereof must consider and apply the [Article 23-A factors] relevant New York City Fair Chance Employment Factors, as that term is defined in 47 RCNY § 2-01, to determine if an unreasonable risk exists.

[(v)] (vi) If an employer, employment agency, or agent thereof, after weighing the required factors, cannot properly determine that either the direct relationship exemption or the unreasonable risk exemption applies, then the employer, employment agency, or agent thereof may not revoke the conditional offer or take any adverse employment action.

(vii) While conducting the Fair Chance Employment Process for an employee's pending case or conviction that occurred during employment, the employer, employment agency, or agent thereof is permitted but not required to place the employee on paid or unpaid leave for a reasonable time. There is a rebuttable presumption that a reasonable time will not exceed five business days.

(2) *The Fair Chance Employment Process:* [If, after] When an employer, employment agency, or agent thereof determines that either the direct relationship or unreasonable risk exemption applies[, the employer, employment agency, or agent thereof] and it wishes to revoke the conditional offer or take an adverse employment action, [the employer, employment agency, or agent thereof] it must first (1) provide a written copy of any inquiry made to collect information about criminal history to the applicant or employee, (2) provide them a written copy of the [Article 23-A analysis] Fair Chance Employment Analysis [to the applicant], (3) inform [the applicant] them that they will be given a reasonable time of at least five business days to respond to the employer's concerns, and (4) consider any additional information [provided by the applicant] they provide during this period.

(i) *Providing a written copy of the inquiry.* The employer, employment agency, or agent thereof must provide a complete and accurate copy of each and every piece of information relied on to determine that the applicant or employee has a [conviction] criminal history. This includes, but is not limited to, copies of consumer reporting agency reports, print outs from the Internet, records available publicly, and written summaries of any oral conversations, specifying if the oral information relied upon came from the applicant.

(ii) *Providing a written copy of the [Article 23-A analysis] Fair Chance Employment Analysis performed by the employer, employment agency, or agent thereof.*

(A) Employers, employment agencies, or agents thereof who seek to revoke an applicant's conditional offer or take an adverse employment action on the basis of an applicant's or employee's criminal history must provide the [applicant] person with the Fair Chance Employment Notice [below], which is available on the Commission's website, or a comparable notice.

[image of notice repealed]

(B) So long as the material substance does not change, the notice may be adapted to a format preferred by the employer, employment agency, or agent thereof to account for the specific circumstances involving the applicant and the adverse employment action or denial of employment. A Fair Chance Employment Notice must (1) include specific facts [that were considered pursuant to the Article 23-A analysis] for each factor of the Fair Chance Employment Analysis and the outcome, (2) articulate the [employer's, employment agency's, or agent's concerns and] basis for determining that there is a direct relationship or an unreasonable risk, and (3) inform the applicant or employee of their rights upon receipt of the notice, including how they can respond to the notice and the time frame within which they must respond.

(iii) The employer, employment agency, or agent thereof must allow the applicant or employee a reasonable time to respond to the concerns of the employer, employment agency or agent thereof.

(A) An employer, employment agency, or agent thereof must consider the following information when determining how much time is reasonable: (1) what additional information the applicant or employee is purporting to gather and whether that additional information would change the outcome of the [Article 23-A analysis] Fair Chance Employment Analysis; (2) why the applicant or employee needs more time to gather the information; (3) how quickly the employer, employment agency, or agent thereof needs to fill the position; and (4) any other relevant information. A reasonable time shall be no less than [3] five business days.

(B) During this time, an employer, employment agency, or agent thereof may not permanently place another person in the [applicant's] person's prospective or current position.

(C) The applicant or employee may provide oral or written evidence of rehabilitation, which, if provided, the employer, employment agency, or agent thereof must consider in [applying the Article 23-A factors] its new Fair Chance Employment Analysis.

(D) The time period begins when the applicant or employee receives both the Fair Chance Employment Notice and a written copy of the inquiry.

(iv) *Response of employer, employment agency, or agent thereof to additional information.*

(A) If, within the reasonable time allowed by the employer, employment agency, or agent thereof as required by this subdivision, the applicant or employee provides additional information related to the concerns identified by the employer, the employer, employment agency, or agent thereof must consider whether the additional information changes [the Article 23-A analysis] its Fair Chance Employment Analysis.

(B) If the employer, employment agency, or agent thereof reviews the additional information and makes a determination not to hire the [applicant] person or take an adverse employment action, the employer, employment agency, or agent thereof must relay that decision to the [applicant] person in writing.

(v) If an employer, employment agency, or agent thereof determines after conclusion of the Fair Chance Employment Process to revoke the conditional offer of employment or to take adverse action, the employer, employment agency, or agent thereof may consider whether any alternate positions are vacant and available to the [applicant] person that would alleviate the concerns identified by the [Article 23-A analysis] Fair Chance Employment Analysis, provided that failure to consider or provide an offer to fill an alternative position shall not be considered a violation of this section.

(3) *Errors, Discrepancies, and Misrepresentations.*

(i) If an applicant or employee realizes that there is an error on a criminal background check, they [must] should inform the employer, employment agency, or agent thereof of the error and request the necessary time to provide supporting documentation.

(A) If the applicant or employee demonstrates within the reasonable time allowed by the employer pursuant to this subdivision that the information is incorrect and the applicant or employee has no conviction history or pending case, the employer, employment agency, or agent thereof may not withdraw the conditional offer or take any adverse employment action on the basis of the applicant's or employee's perceived criminal history.

(B) If the applicant or employee demonstrates that the criminal history resulted in a non-conviction, the employer, employment agency, or agent thereof may not withdraw the conditional offer or take any adverse employment action on the basis of the applicant's or employee's criminal history.

(C) If the applicant or employee demonstrates that the conviction history or pending case is different than what is reflected in the background check, the employer, employment agency, or agent thereof must conduct the [Article 23-A analysis] Fair Chance Employment Analysis based on the person's correct and current [conviction] criminal history and must follow the Fair Chance Employment Process.

(ii) If a background check reveals that an applicant or employee has intentionally failed to answer a legitimate question about or has otherwise intentionally misrepresented their conviction history or pending case, the employer, employment agency, or agent thereof may revoke the conditional offer or take an adverse employment action, provided that the

employer, employment agency, or agent thereof first provides the person with the information that led it to the determination that an intentional misrepresentation was made and gives the person a reasonable period of at least five business days to respond. However, an employer, employment agency, or agent thereof may not take adverse action based on the person's failure to divulge information that the employer, employment agency, or agent thereof is prohibited from inquiring about or taking adverse action on pursuant to § 8-107(11) of the Code.

(f) *Temporary Help Firms.*

(1) A temporary help firm is bound by the same pre-conditional offer requirements as other employers and must follow the Fair Chance Employment Process if it wishes to withdraw a conditional offer based on the conviction history or pending case of an applicant. A “conditional offer” from a temporary help firm is an offer to place an applicant in the firm’s labor pool, from which the applicant may be sent on job assignments to the firm’s clients.

(2) In order to evaluate job duties relevant to the conviction history under the [Article 23-A analysis] Fair Chance Employment Analysis, a temporary help firm may only consider the minimum skill requirements and basic qualifications necessary for placement in its applicant pool.

(3) Any employer, employment agency, or agent thereof who utilizes a temporary help firm to find applicants for employment must [follow the Fair Chance Process and may] not make any statements or inquiries about an applicant’s criminal history until after the applicant has been assigned to the employer by the temporary help firm. After the applicant has been assigned to the employer, the employer may inquire into the applicant’s criminal history and, if it discovers criminal history upon which it wishes to base an adverse employment action, must go through the Fair Chance Employment Process before doing so.

(4) A temporary help firm may not aid or abet an employer’s discriminatory hiring practices. A temporary help firm may not determine which candidates to refer to an employer based on an employer’s preference not to employ persons with a specific type of conviction or criminal history generally. A temporary help firm may not provide the applicant’s criminal history to prospective employers until after the employer has made a conditional offer to the applicant.

(g) *Exemptions.*

[(1) The Fair Chance Process mandated by § 8-107(11-a) of the Human Rights Law shall not apply to any actions taken by an employer or agent thereof with regard to an applicant for employment:

(i) In a position where federal, state, or local law requires criminal background checks.

(A) This exemption does not apply to an employer authorized, but not required, to check for criminal backgrounds.

(B) This exemption does not exempt an employer from the requirements of § 8-107(10) of the Human Rights Law.

(ii) In a position where federal, state, or local law bars employment of individuals based on criminal history.

(A) This exemption applies to particular positions where the federal, state, or local law bars employment with respect to a particular type of conviction. In such cases, an employer or agent thereof may: (1) notify applicants, of the specific mandatory bar to employment prior to a conditional offer; (2) inquire at any time during the application process whether an applicant has been convicted of the specific crime that is subject to the mandatory bar to employment; and (3) disqualify any applicant or employee with such criminal history without following the Fair Chance Process.

(B) This exemption does not apply where the employer's decision about whether to hire or promote an applicant based on their criminal history is discretionary. The fact that a position requires licensure or approval by a government agency does not by itself exempt the employer, employment agency, or agent thereof from the Fair Chance Process. When hiring for such a position, if the exemption in subdivision (g)(1)(i) or (g)(1)(ii)(A) does not apply, before making a conditional offer the employer may only ask whether the applicant has the necessary license or approval or whether they can obtain it within a reasonable period of time.

(iii) In positions regulated by self-regulatory organizations as defined in § 3(a)(26) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a, where the rules or regulations promulgated by such organizations require criminal background checks or bar employment based on criminal history. This exemption includes positions for which applicants are not required to be registered with a self-regulatory organization, when the applicant nevertheless either chooses to become registered while in the position or elects to maintain their prior registration.

(iv) In positions as police and peace officers, working for law enforcement agencies, and for other exempted city agencies, specifically:

(A) As a police officer or peace officer, as those terms are defined in;

(B) At a New York City law enforcement agency, including but not limited to the City Police Department, Fire Department, Department of Correction, Department of Investigation, Department of Probation, the Division of Youth and Family Services, the Business Integrity Commission, and the District Attorneys' offices in each borough; or

(C) In a position listed in the determinations of personnel published as a Commissioner's calendar item and listed on the website of the Department of Citywide Administrative Services as exempt because the Commissioner of Citywide Administrative Services has determined that the position involves law enforcement; is susceptible to bribery, or corruption; or entails the provision of services to or the safeguarding of people who, because of age, disability, infirmity or other condition, are vulnerable to abuse. Once the Department of Citywide Administrative Services exempts a position, an applicant may be asked about their conviction history at any time; however, applicants who are denied employment because of their conviction history must receive a written copy of the Article 23-A analysis.

(2) Standard of Proof: It shall be an affirmative defense that any action taken by an employer or agent thereof is permissible pursuant to paragraph 1 of this subdivision.]

(1) Mandatory Forfeiture, Disability, or Bar to Employment Imposed by Law. For applicants and employees where a mandatory forfeiture, disability or bar to employment is imposed by law and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct, employers, employment agencies, and their agents are not prohibited from:

- a. making inquiries or statements about an applicant's or employee's non-convictions, denying employment to an applicant, or taking adverse action against an employee based on the applicant's or employee's non-convictions as set forth in 47 RCNY §§2-04(a)(6) and (b); and
- b. denying employment to an applicant or taking adverse employment action against an employee based on the applicant's or employee's conviction history or pending cases without undertaking the Fair Chance Employment Process set forth in 47 RCNY §§ 2-04 (a)(5) and (e).

When an employer, employment agency or their agency relies on mandatory legal bar in error, the adverse action will be evaluated consistent with 47 RCNY § 2-04 (a).

(2) Police Officers and Peace Officers. For police officer and peace officer positions, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, employers, employment agencies, and their agents are not prohibited from:

- a. making inquiries or statements about an applicant's criminal history prior to making a conditional offer of employment, as set forth in 47 RCNY §§ 2-04(a)(2)-(4), (6), and (b)-(d);
- b. denying employment to an applicant based on the applicant's criminal history without undertaking the Fair Chance Employment Process, as set forth in 47 RCNY §2-04(e);
- c. making inquiries or statements about an employee's non-convictions, as set forth in 47 RCNY § 2-04(a) (6); and
- d. taking adverse employment action against an employee based on the employee's criminal history without undertaking the Fair Chance Employment Process, as set forth in 47 RCNY §§ 2-04(a)(5) and (e).

(3) Positions with Law Enforcement Agencies Other than Police Officers and Peace Officers. For non-police officer and non-peace officer positions with law enforcement agencies, as the term "law enforcement" is used in article 23-a of the correction law, including but not limited to the police department, the fire department, the department of correction, the department of investigation, the department of probation, the division of child protection and the division of youth and family justice of the administration for

children’s services, the business integrity commission, and the district attorneys’ offices, employers, employment agencies, and their agents are not prohibited from:

- a. making inquiries or statements about an applicant’s convictions for a violation sealed pursuant to Criminal Procedure Law §160.55 and criminal actions that are not currently pending that were concluded in one of the following ways, as set forth in 47 RCNY §§ 2-04(b), (d), and (e):
 - i. an adjudication as a youthful offender, as defined by Criminal Procedure Law § 720.35(1), even if not sealed or marked confidential;
 - ii. a conviction of a violation, as defined in Criminal Procedure Law § 160.55, even if not sealed; or
 - iii. a conviction that has been sealed under Criminal Procedure Law § 160.58 or § 160.59;
- b. denying employment to an applicant based on the applicant’s arrest or conviction record without undertaking the Fair Chance Employment Process as set forth in 47 RCNY §§ 2-04(a)(5) and (e);
- c. making inquiries or statements about a current employee’s convictions for a violation sealed pursuant to Criminal Procedure Law §160.55 and criminal actions that are not currently pending that were concluded in one of the following ways:
 - i. an adjudication as a youthful offender, as defined by Criminal Procedure Law § 720.35(1), even if not sealed or marked confidential;
 - ii. a conviction of a violation, as defined in Criminal Procedure Law § 160.55, even if not sealed; or
 - iii. a conviction that has been sealed under Criminal Procedure Law § 160.58 or § 160.59, except for those described in sections 1 and 2.a of the definition of “non-conviction”; and
- d. taking adverse employment action against an employee based on the employee’s conviction history or pending cases without undertaking the Fair Chance Employment Process, as set forth in 47 RCNY §§ 2-04(a)(5) and (e).

(4) Public Agencies Other than Law Enforcement Agencies Taking Adverse Action Against an Employee. Where an employee of a public agency is entitled to a disciplinary process as set forth in section 75 of the civil service law, or where the public agency follows a disciplinary process set forth in agency rules or as required by law, the public agency is permitted to take adverse employment action against an employee based on criminal convictions that occur during employment or pending cases that preceded or arose during employment without undertaking the Fair Chance Employment Process.

(5) Specific Positions Listed by the New York City Department of Citywide Administrative Services Certain positions are determined by the commissioner of citywide administrative services to involve law enforcement, be susceptible to bribery or other corruption, or entail the provision of services to or safeguarding of persons who,

because of age, disability, infirmity or other condition, are vulnerable to abuse. With regard to such positions, which are listed in a calendar item on the department's website, employers, employment agencies, and their agents are not prohibited from:

- a. making inquiries or statements about an employee's or applicant's conviction history or pending cases as set forth in 47 RCNY §§ 2-04(a)(2)-(4), (6), and (b)-(d); and
- b. denying employment to an applicant based on the applicant's conviction history or pending cases or taking adverse employment action against an employee based on the employee's conviction history or pending cases without undertaking the Fair Chance Employment Process, as set forth in 47 RCNY §§ 2-04(a)(5) and (e).

Notwithstanding the exemption set forth in section 2-04(g)(5) of this chapter, for such positions, employers, employment agencies, or their agents must provide a written copy of the employer's Fair Chance Employment Analysis to applicants who are denied employment or employees subject to an adverse employment action because of the applicant's or employee's conviction history or pending cases.

(6) Certain Positions Regulated by Self-Regulatory Organizations as Defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as Amended. Employers, employment agencies, and their agents in the financial services industry are exempt from the following prohibitions, to the extent that compliance with industry-specific rules and regulations promulgated by a self-regulatory organization require such actions:

- a. making inquiries or statements about an employee's or applicant's conviction history or pending cases as set forth in 47 RCNY §§ 2-04(a)(2)-(4), (6), and (b)-(d);
- b. denying employment to an applicant based on an applicant's conviction history or arrest record without undertaking the Fair Chance Employment Process as set forth in 47 RCNY §§ 2-04(a)(5), and (e); and
- c. taking adverse employment action against an employee based on the employee's conviction history or pending cases without undertaking the Fair Chance Employment Process, as set forth in 47 RCNY §§ 2-04(a)(5) and (e).

Non-regulated positions in self-regulatory organizations are not exempt under 47 RCNY § 2-04(g)(6).

(7) Positions for Which a Criminal Background Check is Legally Required for Employment Purposes Pursuant to Federal, State, or Local Law. Employers, employment agencies, and their agents required by law to perform a criminal background checks are exempt from the following prohibitions, to the extent that compliance with federal, state, or local law requires such actions:

- a. making inquiries or statements about an employee's or applicant's conviction history or pending cases as set forth in 47 RCNY §§ 2-04(a)(2)-(4), (6), and (b)-(d);

- b. making inquiries or statements related to an applicant's conviction history or pending cases until after extending a conditional offer of employment as set forth in 47 RCNY § 2-04(b); and
- c. denying employment to an applicant or taking adverse employment action against an employee based on an applicant's or employee's conviction history or pending cases without undertaking the Fair Chance Employment Process, as set forth in 47 RCNY §§ 2-04(a)(5), and (e).

Employers, employment agencies, and their agents subject to an exemption under 47 RCNY § 2-04(g)(7) of this chapter are required to undertake all other actions required by this chapter that are not in conflict with the requirements of the federal, state or local law that form the basis for the exemption. When an employer, employment agency or their agency relies on mandatory legal bar in error, the adverse action will be evaluated consistent with 47 RCNY § 2-04(a).

Unless the employer is explicitly required by another law to state in a job posting that a background check is required, the employer, employment agency, or their agent is prohibited by this chapter from doing so in a job advertisement. An employer employment agency, or their agent that is legally required to undertake a criminal background check of an applicant may conduct the background check prior to a conditional offer, but, if they are not required to reject the candidate, they must still conduct a Fair Chance Employment Analysis of the applicant's criminal history and provide the applicant a copy of the inquiry and Fair Chance Employment Notice and a reasonable period of at least five days to respond.

(8) Legally Mandated Exclusions from Employment Based on Certain Criminal

Histories. Employers, employment agencies, and their agents required by law to exclude applicants with certain criminal histories from certain positions are exempt from the following prohibitions, to the extent that compliance with federal, state, or local law requires such action:

- a. making inquiries or statements about an employee's or applicant's conviction history or pending cases as set forth in 47 RCNY §§ 2-04(a)(2)-(4), (6), and (b)-(d); and
- b. denying employment to an applicant or taking adverse employment action against an employee based on an applicant's or employee's conviction history or pending cases without undertaking the Fair Chance Employment Process, as set forth in 47 RCNY §§ 2-04(a)(5) and (e).

Employers, employment agencies, and their agents subject to an exemption under 47 RCNY § 2-04(g)(8) of this chapter are required to undertake all other actions required by this chapter that are not in conflict with the requirements of the federal, state or local law that form the basis for the exemption. Unless the employer is explicitly required by another law to state in a job posting that a background check is required, the employer, employment agency, or their agent is prohibited by this chapter from doing so in a job advertisement. An employer that is legally required to exclude an applicant from

employment based on a specific criminal history may conduct the background check prior to a conditional offer. When an employer, employment agency or their agency relies on mandatory legal bar in error, the adverse action will be evaluated consistent with 47 RCNY § 2-04(a).

(9) Standard of Proof: It shall be an affirmative defense that any action taken by an employer, employment agency, or agent thereof is permissible pursuant to paragraphs 1 through 8 of this subdivision.

(h) *Licenses, Registrations, and Permits.*

(1) Licensing agencies may not deny any license, registration, or permit to any applicant, or act adversely upon any holder of a license, registration, or permit, based on criminal history in violation of Article 23-A of the [New York Corrections] Correction Law.

(2) Prior to denying or taking any adverse action against an individual applying for a license, registration, or permit based on their conviction history, the licensing agency must evaluate the candidate using the [Article 23-A analysis] Fair Chance Employment Analysis.

(3) A finding that an applicant lacks “good moral character” cannot be based on an individual’s criminal history when such an action is in violation of Article 23-A of the [correction law] Correction Law.

(4) [Under no circumstances] Except as provided in paragraph 5 of this subdivision, [may] an individual applying for a license, registration, or permit[,] may not be questioned about non-convictions, nor can any adverse actions or denials be made based on non-convictions.

(5) *Exemption as to licenses, registrations, and permits:*

(i) Paragraphs (1) through (4) of this subdivision do not apply to licensing activities in relation to the regulation of explosives, pistols, handguns, rifles, shotguns, or other firearms and deadly weapons.

(ii) Any agency authorized to issue a license, registration, or permit may consider age, disability, or criminal history as a criterion for determining eligibility or continuing fitness for a license, registration, or permit[,] when specifically required to do so pursuant to federal, state, or local law.

(iii) Paragraph (4) of this subdivision does not apply to the issuance of a license, registration or permit by the Business Integrity Commission insofar as the non-conviction is a violation that has not been sealed, non-criminal offense under the law of another state that has not been sealed, or an arrest or criminal accusation followed by such an outcome.

(i) *Enforcement and Penalties*

(1)]There is a rebuttable presumption that an employer, employment agency, or agent thereof was motivated by an applicant’s criminal history if it revokes a conditional offer of employment without following the Fair Chance Employment Process. This presumption can be rebutted by demonstrating that the conditional offer was revoked based on: (1) the results of a medical exam in situations in which such exams are permitted by the American with Disabilities Act; (2) information the employer, employment agency, or agent thereof could not have reasonably known before the conditional offer if, based on the information,

the employer, employment agency, or agent thereof would not have made the offer and the employer, employment agency, or agent thereof can show that the information is material; or (3) evidence that the employer, employment agency, or agent thereof did not have knowledge of the applicant's criminal history before revoking the conditional offer.

[(2) *Early Resolution for Commission-initiated complaints regarding certain per se violations.*

(i) Early Resolution is an expedited settlement option that is available to respondents in certain circumstances that allows them to immediately admit liability and comply with a penalty in lieu of litigating the matter.

(ii) Except as provided in subparagraph (iii) below, the Law Enforcement Bureau [will] may offer Early Resolution for Commission-initiated complaints of per se violations under the following circumstances: (1) the respondent has committed a per se violation as defined in 47 RCNY § 2-04(a); (2) there are no other pending or current allegations against the respondent concerning violations of the Human Rights Law; (3) the respondent has 50 or fewer employees at the time of the alleged violation; and (4) the respondent has had no more than one violation of the Human Rights Law in the past three years.

(iii) Notwithstanding any other provision of this section, the Commission retains discretion to proceed with a full investigation and a referral to the Office of Administrative Trials and Hearings when the offer of Early Resolution will not serve the public interest. Factors that indicate that an Early Resolution is not in the public interest include, without limitation:

(1) the respondent has had prior contact with the Commission from which an inference of willfulness regarding the violation may be inferred; (2) the respondent works with vulnerable communities; or (3) the Commission has reason to believe discrimination is rampant in respondent's industry. For purposes of this section, a violation of any provision of the Human Rights Law that resulted in an admission pursuant to Early Resolution, conciliation or other settlement agreement, or a finding of liability issued after a hearing or trial pursuant to a complaint filed with or by the Commission shall be considered a past violation.

(iv) *Early Resolution: Notice, Penalties and Procedure.*

(A) A respondent shall be served with a copy of the Early Resolution Notice simultaneously with service of the complaint.

(B) The Notice shall state that the respondent has 90 days to answer a complaint in which the respondent has been offered the option of Early Resolution, and that there will be no extensions of time granted.

(C) The Notice shall inform the respondent of their right to either: (1) admit liability and agree to the affirmative relief and penalty, or (2) file an answer to the complaint in compliance with 47 RCNY § 1-14, except that the time to respond shall be 90 days instead of 30.

(D) An Early Resolution penalty shall include: (1) a mandatory and free training provided by the Commission; (2) a requirement that the respondent post a notice of rights under the Human Rights Law; and (3) a monetary fine as determined by the penalty schedule outlined in paragraph (E) of this subdivision. The Notice shall inform the respondent that a private individual aggrieved by the same violation may also file an independent

complaint with the Commission or may bring a court action.

(E) Fines will be assessed according to the following penalty schedule:

Employer Size (at the time of violation)	1st Offense	2nd Violation (within 3 years of the resolution date of the first violation)
4-9 Employees	\$500.00	\$1,000.00
10-20 Employees	\$1,000.00	\$5,000.00
21-50 Employees	\$3,500.00	\$10,000.00
<p>** Distinct and contemporaneous violations will be counted separately for the purpose of calculating a monetary penalty. For example, an employer who has between four and nine employees and is using a discriminatory advertisement in violation of 47 RCNY § 2-04(a)(1) and an application that references criminal history in violation of 47 RCNY § 2-04(a)(2) will be charged with two separate violations of \$500.00 each. However, multiple violations of one section, for example, posting a discriminatory advertisement on three different websites, will be counted as one violation for the purpose of assessing a penalty under this section.</p>		

(F) If the employer believes that the employer size used to assess the imposed penalty is incorrect, the employer may call the number listed on the Early Resolution Notice.

(v) *Admission of Liability.* An admission of liability must be returned to the Commission in the manner prescribed in the Early Resolution Notice. Once the admission is received, the Law Enforcement Bureau shall promptly forward such agreement to the Chair. The signature of the Chair with the notation “SO ORDERED” shall be construed to be a final order of the Commission. A copy of such order shall be served upon the respondent.

(vi) *Contesting Liability and Filing an Answer.*

(A) Notwithstanding any provision of sections 1-61 or 1-62 of this title, if a respondent elects to deny liability and contest the allegations in the complaint, the respondent shall file an answer upon receipt of the answer, the Law Enforcement Bureau shall refer the case to the Office of Administrative Trials and Hearings for a hearing pursuant to section 1-71 of this title.

(B) For purposes of a hearing, the case will proceed in accordance with subchapter C of Chapter 2 of Title 48 of the Rules of the City of New York.

(vii) *Failure to Respond.*

(A) If a respondent fails to respond within 90 days to a complaint accompanied by an Early Resolution Notice, all allegations in the complaint will be deemed admitted

unless good cause to the contrary is shown pursuant to section § 8-111(c) of the Human Rights Law.

- (B) Upon default, the Law Enforcement Bureau may refer the case to the Office of Administrative Trials and Hearings pursuant to 47 RCNY § 1-71 and, in a written motion pursuant to 48 RCNY Chapter 1, seek an expedited trial and issuance of a report and recommendation that finds respondent in default and recommend the affirmative relief and penalties requested by the Law Enforcement Bureau. The motion papers will include: all supporting evidence; a copy of the complaint and any additional documentation sent to the respondent; the Early Resolution Notice; and proof of service of the motion.

(viii) *Relief from Default in an Early Resolution Case.* At any time prior to the issuance of a decision and order, the respondent may move for relief from default.]

(j) *Criminal Record Discrimination in Obtaining Credit.* No person may ask about or take any adverse action based on the non-conviction history of an individual in connection with an application or evaluation for credit.

(k) *Employers Seeking the Work Opportunity Tax Credit (“WOTC”).* Employers, employment agencies, or their agents who wish to claim the WOTC credit are not exempt from this chapter or [the Fair Chance Act] §§ 8-107(9), (10), (11), and (11-a) of the Code. Employers, employment agency, or their agents may, however, require an applicant to complete IRS form 8850 and U.S. Department of Labor Form 9061 before a conditional offer is made so long as the information gathered is used solely for the purpose of applying for the WOTC.

§ 7. Section 3-04 of Title 47 of the Rules of the City of New York is amended to read as follows:

§ 3-04 Applications for Exemption from § 8-107(4)(a) of the [Administrative] Code.

The owner, lessee, proprietor, manager, superintendent or agent of a place or provider of public accommodation may additionally make an application for exemption from the prohibition in § 8-107(4)(a) of the Code on making an age-based restriction on access to or services provided by such public accommodation[which would otherwise be prohibited pursuant to § 8-107(4)(a) of the Administrative Code of the City of New York § 3-03 of these rules]. Such application [shall]must be made in writing to the office of the chairperson of the New York City Commission on Human Rights. The application [shall]must set forth the specific basis for the exemption sought together with any supporting evidence. The chairperson may grant such exemption if, for example, [he or she determines] they determine that the exemption promotes the health, safety or well-being of members of the public, or prevents physical harm to the property or premises of a place of public accommodation, or undue disruption of the quiet enjoyment of a place of public accommodation and is not inconsistent with the goals and policies of the City Human Rights Law. The decision of the Chairperson shall be final.

**NEW YORK CITY LAW DEPARTMENT
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100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Fair Chance

REFERENCE NUMBER: 2022 RG 044

RULEMAKING AGENCY: City Commission on Human Rights

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: July 1, 2024

**NEW YORK CITY MAYOR’S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Fair Chance

REFERENCE NUMBER: CCHR-13

RULEMAKING AGENCY: City Commission on Human Rights

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the rule’s authorizing statute does not provide a cure period.

/s/ Francisco X. Navarro
Mayor’s Office of Operations

July 1, 2024
Date