

# How to Navigate the Illinois Human Rights Act's Protection of Criminal Convictions

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Illinois is one of only a few states that protects conviction records in its anti-discrimination statute. Specifically, the Illinois Human Rights Act prohibits employers from using a conviction record to refuse to hire an applicant or to take an adverse action against an employee. This has led to a number of questions from employers, such as: Does this mean an employer can never terminate an employee or refuse to hire an applicant because of a conviction?

Fortunately for employers, that is not the case. An employer can terminate or refuse to hire based on a criminal conviction, according to Illinois law, if: 1) there is a substantial relationship between the crime and the job or 2) hiring or retaining the convicted worker would create an unreasonable risk to property or safety. However, employers cannot simply decide on their own that one of these factors exists. Employers must complete an interactive process to determine whether a worker's conviction is worthy of an adverse action.

First, the employer must send the individual notice that their conviction is the reason they may not be hired or may be terminated. The notice must: 1) give a specific reason why the conviction may be disqualifying, 2) provide a copy of any conviction history report the employer relied upon, and 3) give the worker the right to contest the accuracy of the conviction history report or provide evidence of mitigation.

You may notice this sounds much like a Fair Credit Reporting Act pre-adverse action letter, and it does, but the Illinois law goes further than the FCRA because it requires specific reasoning for the decision.

Next, if the worker responds within five business days, the employer must consider all the factors, including:

1. The length of time since the conviction
2. The number of convictions
3. The nature and severity of the conviction and its relationship to others' safety and security
4. The circumstances surrounding the conviction
5. The age of the worker at the time of conviction
6. Evidence of rehabilitation efforts

If, after this consideration, the employer still intends to refuse to hire or to terminate the worker, it can move to the last step, final notification to the worker. The employer must notify the worker that the conviction is the basis for the adverse decision and must provide the reasoning behind that decision. The employer also must inform the worker of any existing procedure to request reconsideration of the decision and must inform the worker of their right to file a charge with the Illinois Department of Human Rights.

This notification letter is also similar to the FCRA adverse action letter, but again, is more detailed because it requires the employer to detail its reasoning.

The Illinois Human Rights Act has no blanket requirement that employers hire or retain workers with criminal records. However, employers must remember to follow all of these steps and put meaningful thought into why a criminal conviction is disqualifying.

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National Law Review, Volume XIV, Number 207

Source URL: <https://natlawreview.com/article/how-navigate-illinois-human-rights-acts-protection-criminal-convictions>