

Factors For Consideration: Evidence of rehabilitation/Mitigating Circumstances and the Individualized Assessment Sub-Factors Employers Must Consider

- The nature/gravity of the offense or conduct – this includes:
 - The specific conduct of the individual that resulted in a conviction;
 - If the harm was to property or people;
 - The severity of the harm;
 - The permanence of the harm;
 - Context in which the offense or conduct occurred;
 - If trauma, sexual assault, stalking, dating or domestic violence, human trafficking, duress, or similar other factors contributed to the individual's offense or conduct;
 - If a disability (includes but is not limited to, mental impairment or drug addiction) contributed to the offense or conduct and if it did, if the likelihood of harm arising due to similar conduct could be sufficiently mitigated or even eliminated by a reasonable accommodation provided to the individual, or if the disability has already been mitigated or eliminated due to treatment or other methods; and/or
 - The age of the individual when the offense or conduct occurred.
- How much time has passed since the offense or conduct and/or the completion of the sentence for such offense or conduct – this includes:
 - The amount of time that has passed since the conduct underlying the conviction, (which may significantly predate the conviction, if there was one, itself); and/or
 - If the conviction led to incarceration, how much time that has passed since the individual's release from incarceration.
- The nature of the job/position held or sought – factors to consider are:
 - The specific job duties of the position;
 - If in the context in which the conduct, offense, or conviction occurred, if it is likely to arise in the workplace; and/or
 - If the type or degree of harm of the conduct or offense is likely to occur in the workplace.

Employers may send a pre-adverse action letter to an applicant with a criminal history. Applicants have a choice as to what information they provide, if they provide any information at all. An employer cannot require the applicant to respond and must consider the information that is provided, no matter the amount of information provided.