

# A fair chance to live and work with a criminal record

## Next Door Project

You can't be denied the opportunity to have a job or a place to live in New York City just because you have **a criminal conviction or are facing charges**. Instead, the law tells most employers and landlords when they can ask about your criminal record and what they have to do if they want to legally use it against you.

In most cases, an employer or landlord has to give you a **conditional offer** before asking about your criminal history. Because they have to wait until that point, this means:

- There should not be any ads with statements like “background check,” “no felonies,” or “must have clean record;”
- You can't be asked whether you have a conviction on an application or in an interview before a conditional offer; and
- The only condition to the offer can be a criminal background check. That means the employer has to do all other pre-employment tests, like checking your references or verifying your skills, before looking at your record.

If an employer or landlord then checks your criminal record, they can ask you about the circumstances of any of your convictions. They can only decide to deny you, though, after weighing several factors to see if your conviction or charges are directly related to the opportunity or pose an unreasonable risk of harm to people or property. If they decide to deny you work or a place to live, they have to:

- Explain their decision in writing in a **Fair Chance Notice**,
- Give you a copy of the background check they used, and
- Give you time to respond.

After **an employer** gives you a Fair Chance Notice and a copy of your background check, you have **five business days** to respond with letters of recommendation or other documentation addressing its concerns. If you respond, the employer has to give you its final decision in writing.

**Private housing providers** must give you your background check and five business days to submit proof of positive change; they then also look at several factors and must give you a Fair Chance Notice if they are going to deny you. Neither employers nor landlords can give the opportunity to someone else during those five days—they have to hold it for you.

Finally, note that employers and landlords can only make decisions based upon criminal convictions: **felonies and misdemeanors**. They cannot use sealed cases, youthful offender

[www.cssny.org/  
programs/entry/  
the-next-door-project](http://www.cssny.org/programs/entry/the-next-door-project)  
**212-614-5441**  
[legal@cssny.org](mailto:legal@cssny.org)

adjudications, and convictions for violations, like disorderly conduct. A pending charge for a violation could be used against you, but it will usually not be serious enough to be directly related or pose an unreasonable risk.

### **Who is protected by these laws?**

Anyone who works or seeks to live and work within the five boroughs of New York City, even if they live elsewhere.

### **Who has to follow these laws?**

- Employment: all private employers with four or more employees and all temp agencies. Interns and independent contractors are protected the same as employees.
- Housing: all private landlords; real estate brokers and agents; and sellers of condos, co-ops, and housing.

### **Who *doesn't* have to follow these laws?**

The rules are different for **the government and the entities it regulates**. When the government is the employer or is deciding whether to give you a license to do a job, like security guard or real estate agent, it can't deny you just because you have a criminal record. But it has **much broader discretion** to deny you based on your criminal record and does not have to explain why. It can also ask you about your record at any time.

The government also regulates jobs working with **vulnerable people**, like children, the elderly, and people who are physically or mentally disabled. Working in a school, being a home health aide, and serving people in a treatment program are some examples of jobs like this. Even though those jobs are with private companies or nonprofits, they can ask about your criminal record at any time. This is because they have to follow **laws** saying they can't hire people with certain serious convictions, so they can ask you if you have one. Those laws also require the government to check your background first to decide if your convictions mean you shouldn't work there.

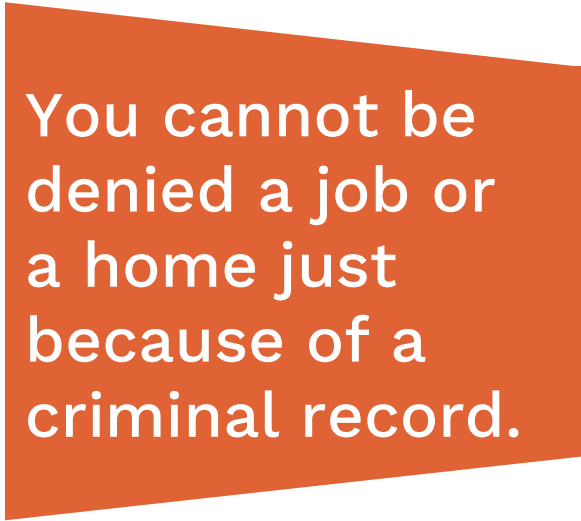
Remember, if the government makes the decision, it has broad discretion to deny you and does not have to explain why. If the government approves you, however, the private employer has **much less discretion** to deny you and doing so is often illegal.

In **housing**, the government agencies that handle public housing and vouchers can ask you about your criminal convictions at any time. If they deny you, though, you have the right to a hearing to show why you do not pose a risk.

### **What if I see an employer or housing provider breaking the law?**

Contact the NYC Human Rights Commission, which enforces these laws. You can call 311 and ask for "Human Rights" or dial (718) 722-3131. The Commission can address any discrimination that happened within the last year. You may file a complaint in court up to three years after experiencing discrimination, however, and CSS may be able to represent you for free.

More information is available at [nyc.gov/fairchancenyc](https://nyc.gov/fairchancenyc) and [nyc.gov/fairchancehousing](https://nyc.gov/fairchancehousing).



You cannot be denied a job or a home just because of a criminal record.