

# FAIR CHANCE HIRING

## TOOLKIT FOR BUSINESSES

### BUSINESS GROWTH THROUGH FAIR CHANCE HIRING

One of the biggest challenges facing business owners in our region is finding staff. There's a massive pool of untapped talent that small businesses can benefit from using fair chance, or second chance, hiring.

Making the decision to be a fair-chance employer to someone with a criminal record, or "justice-involved individuals", is a significant step which requires careful reflection and understanding to ensure that your company has a solid understanding of the impact this decision will have. To ensure that you have all the facts before you begin, we've outlined some important legal and ethical implications that must be considered and properly implemented to maximize the outcomes for both employer and those that you may hire.

This toolkit was originally produced as a joint project between the Greater Oklahoma City Chamber, the Oklahoma County Criminal Justice Advisory Council, and the Moore-Norman Technology Center. It has been revised to include information relevant to our service areas. We offer this resource to our members and others as part of our respective economic and workforce development initiatives.

A handwritten signature in blue ink that reads 'Jaime'.

Jaime Schmeiser  
President

Sullivan County Chamber of Commerce

A handwritten signature in blue ink that reads 'Ray'.

Ray Pucci  
President

Delaware County Chamber of Commerce



## FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES

# EMPLOYER QUICK START GUIDE

### SHOULD I employ justice involved?

- Will my company's culture support the employment goals of this individual?
- Can I accommodate his/her constraints, such as parole check-ins, monitoring, etc.?
- Have I removed questions regarding felony convictions from my company's employment application?

### HOW can I mitigate concerns about loss?

- Contact applicant references, thoroughly review work histories, and, if applicable, conduct background checks.
- Employee applies for Federal Bonding Program. You and your business can be insured for free by the federal government for up to \$25,000 for any loss of money or property.

### WHERE do I find candidates?

- New York State Department of Labor: [www.Labor.NY.gov](http://www.Labor.NY.gov)
- Regional Workforce Development Boards:  
Sullivan County (Center for Workforce Development)  
<https://sullivanny.us/Departments/Workforcedevelopment>  
Delaware County (CDO Workforce)  
<https://www.cdoworkforce.org/>

### WHAT incentives are available?

- WORK OPPORTUNITY TAX CREDIT (WOTC). Your business can earn the WOTC federal tax credit when you hire a new employee with a previous felony conviction. The maximum tax credit for each new hire is \$2,400. To be eligible for the full credit, the employee must work at least 400 hours during the tax year. You may be eligible for a partial credit for eligible employees who work at least 120 hours.

### HOW does this benefit my business?

- Dedicated and loyal employees
- Increased talent pool
- Community service

### HOW does this support my community?

- Employment reduces recidivism, thus reducing local and state costs
- Improves local economy
- Creates strong, able, contributing citizens and families

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*



## FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES

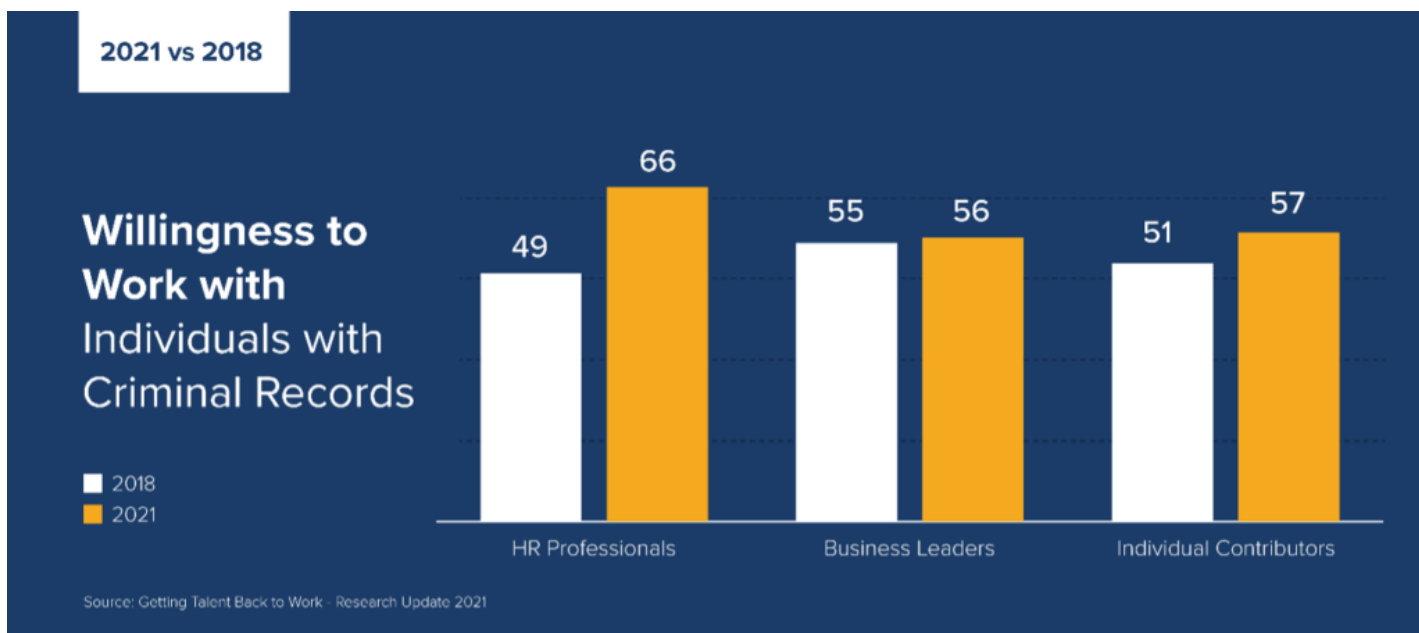
## TIPS FOR HIRING THE JUSTICE-INVOLVED

### COMPANY CULTURE

Before posting a position, examine the culture of your organization. Employees that trust their organization are willing to go the extra mile every single day. Think honestly about your organization. Do implicit biases exist? As the hiring manager or decision maker, reflect upon your own feelings about hiring someone with a justice-involved background. Can you be fair and impartial? Can you be respectful and treat them as you would any other employee? Don't set these new employees or your company up for failure. When you focus on intentionally developing your company's culture, you are taking a necessary first step to building a foundation for success when hiring any employee-- especially those that have been justice-involved.

### PEOPLE-FIRST POLICIES

While policies are an essential component of any organization, there will be times where exceptions should be considered, and it is a responsibility of leadership to work with their team toward a solution. If an employee is continually having the same issue (tardiness, behavioral, etc.), the employee one-on-one and try to get to the root cause. Perhaps there is a solution you can help provide that would assist in supporting your employee and finding a successful alternative. Finding the balance between written policies and non-written understanding helps put people first and sets your justice-involved employee up for success.



*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*



# FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES

## TIPS FOR HIRING THE JUSTICE-INVOLVED

### DON'T JUST ASK. LISTEN.

One of the most difficult things to accomplish as a leader is to truly understand your team and their needs. It's easy to send out a survey that asks for their thoughts, but what are you doing with the results?

### LANGUAGE

While we never want to downplay the seriousness of an offense, remember that those with backgrounds have served their time and are working hard to get back into a normal life. It's important to show respect and support their dignity. Avoid using such terms as "criminal" or "offender" and instead opt for "justice-involved", "reentry employee", or "background-involved". Ideally, treat these potential employees as you would any other applicant.

### INTERVIEWING

It may seem obvious, but it must be stated: NEVER ask applicants if they have a criminal history during interviews. A gap of several years in a work history may be indicated but allow the applicant to broach that information. Remain neutral in both your verbal and nonverbal responses to such a disclosure.

### APPLICATION FORMS

Your application process will be more inclusive if you ban the box or remove the question about felony charges or convictions from your application. Federal employers and federal contractors are prohibited from asking applicants about criminal convictions until a conditional job offer is made. Choose candidates for their merits and skills and have an open, respectful conversation about backgrounds when you offer the position. Allow them to share their experiences and stories.

### BACKGROUND CHECKS

There is a right way and a wrong way to read background checks. Charged with a crime and convicted of a crime are very different. Work with a re-entry employment specialist to understand the terminology in a background report. Allow applicants to share their experiences and stories.

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*



# FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES LEGAL IMPLICATIONS

The choice to become a fair-chance employer implicates legal concerns both in terms of recruitment as well as employee and customer relations.

If an employer chooses to be a fair-chance employer or not, company recruiters should be cognizant that hiring decisions that consider the criminal background of justice-involved candidates must be based upon an individualized assessment. In other words, blanket policies that prohibit the hiring of justice-involved individuals are not legally permissible. Why? While 1 in 17 Caucasian men will spend time in prison at some point, the rate is 1 in 6 for Hispanic men and 1 in 3 for African American men. As a result, blanket prohibitions on hiring justice-involved individuals have a disparate impact on members of racial and ethnic minorities and can violate Title VII of the Civil Rights Act of 1964.

At the same time, this individualized assessment should consider the nature of the work and customer care environment. Employers should be aware of federal and state hiring regulations that may impact the hiring of certain justice-involved individuals for particular positions. Beyond compliance with specific regulatory mandates, employers should also keep in mind potential liability for negligent hiring. Liability for negligent hiring can arise when an employee causes harm to another while in service to the employer and where the specific danger results in an injury. For example, if an employer knew that an employee had previously been convicted of assault and the employee later assaulted a customer, the employer could face liability for negligent hiring. Of course, such an analysis would consider the same factors that an employer should be weighing in any event when considering the background of a justice-involved individual.

## THE FACTS

- By law, an employer cannot have a blanket policy against hiring anyone with a criminal record.
- Research shows no higher incidence of workplace crime, violence, dishonesty, or theft committed by people with a criminal record.
- One in four adults of working-age have a criminal record.
- Two out of three men were working and paying taxes before they were incarcerated.
- The overwhelming majority of workplace violence is committed by outsiders, not employees.

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*



# FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES LEGAL GUIDELINES

Fair-chance employers should consider the following steps when weighing the hiring of justice-involved individuals:

- **KNOW YOUR PARAMETERS.** Do federal and or state regulations Place particular limits on hiring for positions in your industry?
- **TRAIN RECRUITERS AND HIRING MANAGERS.** All individuals involved in considering the impact of prior criminal history on hiring should understand how both the legal parameters and a company's own values impact these decisions.
- **MAKE INDIVIDUALIZED DECISIONS.** Weigh the nature and gravity of the offense(s), the time that has passed since the conviction and/or the individual's release from incarceration, the description of the job held or sought, and applicable state and federal statutes and regulations.
- **TREAT EACH APPLICANT AS AN INDIVIDUAL.** Whether a successful hire or not, avoid assumptions about this group as a whole based on singular experiences.

## NEW YORK STATE LAW

Employers cannot ask about arrests or criminal accusations:

- That were resolved in an individual's favor
- That were resolved by a youthful offender adjudication
- That resulted in a sealed conviction

Employers can ask about:

- An arrest or criminal accusation that is currently pending
- Arrests or criminal accusations that were not resolved in an individual's favor

However, you cannot refuse to hire someone because he or she has been previously convicted of one or more criminal offenses, or because of a belief that a conviction record indicates a lack of “good moral character”, unless:

- There is a direct relationship between one or more of the previous criminal offenses and the employment sought or held
- Employing or continuing to employ the person would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public

The New York State Human Rights Law applied throughout the state protects:

- People with prior arrest records that were favorably resolved or resulted in sealed convictions or youthful offender adjudications
- People with prior criminal conviction records

The employer's obligations under these protections are in separate sections of the Human Rights Law, which imposed different requirements. Employers should consult their own attorneys about the specific applications of the law.

Employers should also be aware that some municipalities have separate requirements for businesses within their jurisdictions.

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*



# FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES COMPLIANCE

As with other hiring decisions, there are boundaries placed on employers when hiring individuals with a background in the justice system. The Equal Employment Opportunity Commission (EEOC) and the Fair Credit Reporting Act (FCRA) provide resources and guidance when making hiring decisions. These resources should be utilized to maximize opportunities and foster an inclusive environment.

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

The EEOC has long taken the position that the use of an individual's criminal history may result in prohibited discrimination based upon race and national origin under Title VII of the Civil Rights Act of 1964. Discrimination could occur if an employer utilizes criminal conviction history against only certain individuals based on their race or national origin. However, the EEOC goes further to point out that a neutral policy of excluding certain applicants based upon criminal conviction history may also be unlawful if it results in a disparate impact upon individuals protected under Title VII. Therefore, the EEOC requires employers to establish that the exclusion of individuals with criminal convictions must be job-related and consistent with business necessity. Employers should conduct an individualized assessment to determine whether the conviction would be disqualifying. Employers should consider:

1. the nature and gravity of the offense or contact;
2. the time that has passed since the offense, conduct and/or completion of the sentence; and
3. the nature of the job held or sought.

The EEOC guidance states that conducting an individualized assessment will reduce the likelihood disparate impact discrimination will occur. More information regarding the EEOC enforcement guidance is at [www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

## FAIR CREDIT REPORTING ACT (FCRA)

The Fair Credit Reporting Act requires employers who use third-party service providers (consumer reporting agencies or background checking companies) to conduct criminal background checks for credit checks on applicants or current employees to follow strict procedures for providing notice, disclosure, and consent by the applicant/employee prior to taking any action against the applicant/employee. Employers utilizing third-party service providers to conduct criminal or credit background checks should be careful to utilize the forms provided by the Federal Trade Commission and or the third-party service provider to ensure compliance. Employers must obtain the consent of the applicant/employee prior to running the background check and then, if the background check reveals information that disqualifies the applicant/employee from employment, employers must follow the procedure to provide a pre-adverse action notice and an adverse action notice. The employee also has the right to a copy of the results of the background check and instructions on how to contest the information with the third-party service provider. More information regarding the requirements of the FCRA can be found at [www.FTC.gov](http://www.FTC.gov).

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*



# FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES INCENTIVES AND SUPPORT

There are several incentives and support programs available to assist Employers in mitigating risk when hiring an individual with a justice-involved background. Just as important, there are services available to those individuals to help them successfully transition to new career opportunities.

## FEDERAL BONDING PROGRAM

The Federal Bonding Program provides important support for justice involved individuals and other challenged jobseekers, helping them secure employment and stay employed.

The program primarily targets justice-involved individuals-- people who have been previously incarcerated and are returning to the community-- and other job seekers who have faced difficulties in finding employment. Bonds can be applied to any job with any employer, in any state, and covers any employee dishonesty committed on or away from the workplace. Full- or part-time employees receiving paid wages (with federal taxes automatically deducted from pay) can be bonded, including those hired by “ temp agencies”. Bonds can also be purchased to cover already employed workers who need funding to prevent being laid off or to secure a transfer or promotion to a different job with a current employer. It is important to note that *employees must apply for the bond*, not employers.

The Federal Bonding Program is a no-cost hiring incentive. It provides you with the chance to establish relationships and build trust with new hires, particularly individuals whose background may have created questions about honesty.

This program provides added financial security for your business.

The Federal Bonding Program has been in existence for over 50 years and currently has a 1% default rate nationwide. To date, over 50,000 individuals have been bonded through the program. There is no cost and no paperwork that a business owner is required to complete. By bonding employees through the program, you are protected from the potential loss of money, property, product, or cash due to employee dishonesty.

The standard fidelity coverage provided by the program is good for six months. After six months, the bond will automatically expire, unless the New York State Department of Labor is contacted to request an additional six months of coverage.

For more information, visit [www.dol.ny.gov/federal-bonding-program-0](http://www.dol.ny.gov/federal-bonding-program-0).

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*





# FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES INCENTIVES AND SUPPORT

## WORK OPPORTUNITY TAX CREDIT (WOTC)

The Work Opportunity Tax Credit (WOTC) is a federal tax credit program available to employers who hire new employees from targeted groups that have historically had difficulty finding employment. This includes, but is not limited to, veterans, people who qualify for Vocational Rehabilitation, and the formerly incarcerated. This credit is used to reduce the federal tax liability of private for-profit employers.

### WOTC TAX SAVINGS

- For employees who work at least 120 hours but less than 400, WOTC tax savings are calculated at 25% of the qualified first-year wages-- a savings of \$1,500 for the employer.
- For employees who work 400 hours or more, WOTC tax savings are calculated at 40% of the qualified first-year wages-- a savings of \$2,400 for the employer

You can get the WOTC for employees with either federal or state convictions. If the new employee was convicted of a misdemeanor or a lesser offense, the employee may still be eligible under a different WOTC category.

To claim the credit, your business must submit form 5884 with your normal federal tax return. For more information and to apply, visit <https://www.dol.gov/agencies/eta/wotc> or contact the NYS Department of Labor's Business Engagement Call Center at 888-708-6712.

## NEW YORK STATE WORK FOR SUCCESS PROGRAM

The Work for Success (WFS) Program is a partnership between New York State Department of Labor (NYSDOL) and the Department of Corrections and Community Supervision (DOCCS). It is an initiative aimed at reducing the high unemployment rate among the thousands of New Yorkers returning home from prison by providing pre-employment and job placement assistance. Individuals are evaluated and identified for referral to the WFS program by DOCCS reentry staff. The policy of New York State is to help reduce recidivism, promote economic development, and improve public safety throughout New York by helping people with criminal convictions find employment.

### FREE HUMAN RESOURCES SERVICES

The Work for Success program matches qualified, trained job applicants who have criminal convictions to your open job orders at no cost to you.

### APPLICANT TRAINING

Work for Success ensures that the job applicants sent to your business have already received training or have experience in applicable job skills. NYSDOL staff can also work with your business to create a specific training program for any new or existing positions.

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*



# FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES

## ADDITIONAL RESOURCES

### US DEPARTMENT OF LABOR

#### WORK OPPORTUNITY TAX CREDIT (WOTC)

- Learn more about how the WOTC benefits employers and how to start utilizing it in this [WOTC Quick Reference Guide for Employers](https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/WOTC_Quick_Reference_Guide_for_Employers.pdf).  
([https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/WOTC\\_Quick\\_Reference\\_Guide\\_for\\_Employers.pdf](https://www.dol.gov/sites/dolgov/files/ETA/wotc/pdfs/WOTC_Quick_Reference_Guide_for_Employers.pdf))
- [Follow these 3 steps](https://blog.dol.gov/2021/09/24/employers-you-should-know-about-this-hiring-incentive?_ga=2.58881069.1651493377.1657137042-610208457.1657137042) to take advantage of the WOTC  
([https://blog.dol.gov/2021/09/24/employers-you-should-know-about-this-hiring-incentive?\\_ga=2.58881069.1651493377.1657137042-610208457.1657137042](https://blog.dol.gov/2021/09/24/employers-you-should-know-about-this-hiring-incentive?_ga=2.58881069.1651493377.1657137042-610208457.1657137042))

#### FEDERAL BONDING

- <https://bonds4jobs.com/our-services/employers>

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

- Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act  
(<https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>)

#### FAIR CREDIT REPORTING ACT

- Background Checks: What Employers Need to Know  
(<https://www.ftc.gov/system/files/documents/plain-language/pdf-0142-background-checks-what-employers-need-know.pdf>)

#### NEW YORK STATE DEPARTMENT OF LABOR

- Hiring Incentives, Tax Credits and Funding Opportunities, including WOTC, Federal Bonding Program, Work for Success, posting available positions, and more  
(<https://dol.ny.gov/hiring-incentives-tax-credits-and-funding-opportunities>)
- Work for Success fact sheet  
(<https://dol.ny.gov/system/files/documents/2021/08/p455-work-for-success-8-21.pdf>)
- Federal Bonding Program fact sheet (<https://dol.ny.gov/system/files/documents/2021/02/p239.pdf>)
- Work Opportunity Tax Credit information (<https://dol.ny.gov/wotc-program>)

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*



# FAIR CHANCE HIRING TOOLKIT FOR BUSINESSES

## ADDITIONAL RESOURCES

### SECOND CHANCE EMPLOYMENT TOOLKIT FOR EMPLOYERS

- Getting Talent Back to Work Initiative from Society for Human Resource Management (SHRM)  
(<https://www.gettingtalentbacktowork.org/#resources>)

### BAN THE BOX

“Ban the Box” refers to the elimination of the checkbox on employment applications asking whether the applicant has been convicted of a criminal offense.

- 'Ban the Box' Turns 20: What Employers Need to Know from Society for Human Resource Management (SHRM)  
(<https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/ban-the-box-turns-20-what-employers-need-to-know.aspx>)
- Sullivan County Legislature has “banned the box” for County government employment  
(<https://sullivanny.us/sites/default/files/departments/CMGR/Newsletter/2022/County%20Manager's%20June%202022%20Newsletter.pdf>)

### WORK FOR SUCCESS EMPLOYER PLEDGE

The Work for Success Employer Pledge, the first statewide pledge of its kind in the nation, provides an opportunity for companies to publicly showcase their practice of considering people with criminal convictions for employment. The Pledge does not require employers to hire any particular individual or numbers of individuals with criminal convictions, but to conduct, as necessary, individualized assessments of whether a conviction affects a person’s suitability for the job.

*WHEREAS, employing qualified New Yorkers from all walks of life can increase productivity, creativity, diversity and employee morale;*

*WHEREAS, as many as 1 in 3 American adults have some type of criminal record, including individuals with skills to contribute to New York State’s competitiveness;*

*WHEREAS, New York’s Work for Success program seeks to aid companies doing business in New York by matching qualified applicants with criminal convictions to companies seeking applicants for open jobs across the state;*

*NOW \_\_\_\_\_, as a corporate citizen committed to inclusiveness, and to continued productivity, pledges to list suitable job openings with the Work for Success program.*

*\_\_\_\_\_ pledges to consider qualified individuals with criminal convictions for employment, conducting, as appropriate, individualized assessments of whether a conviction affects a person’s suitability for a job.*

*\_\_\_\_\_ encourages its fellow companies to join it in signing this pledge, so that together we will utilize the skills and talents of more New Yorkers to serve our customers and grow our businesses.*

Sign the Pledge online (<https://www.ny.gov/content/work-success-employer-pledge>)

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*

## **LOCAL RESOURCES**

Sullivan County Chamber of Commerce  
196 Bridgeville Rd Unit 7  
Monticello, NY 12701  
845-791-4200  
[www.Catskills.com](http://www.Catskills.com)

Delaware County Chamber of Commerce  
5 ½ Main Street, Suite 4  
Delhi, NY 13753  
607-746-2281  
[www.DelawareCounty.org](http://www.DelawareCounty.org)

*This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering fair chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.*