



## **The Opportunity to Compete Act: Frequently Asked Questions**

File a Complaint with NJDOLWD: [http://lwd.dol.state.nj.us/labor/forms\\_pdfs/lsse/MW-31C.pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/lsse/MW-31C.pdf)

Inform NJISJ About Violations: \* <http://www.njisj.org/OCAviolation>

\*You should **BOTH** file a complaint and inform NJISJ

**When Did the Opportunity to Compete Act (OCA) Take Effect?** March 1, 2015.<sup>23</sup>

**Where Can I Read the Full Text of the OCA?** [http://www.njleg.state.nj.us/2014/Bills/PL14/32\\_.PDF](http://www.njleg.state.nj.us/2014/Bills/PL14/32_.PDF)

### **What Does the Opportunity to Compete Act Do?**

The OCA prohibits *many* employers (but not all) from asking about your criminal record on the paper job application.<sup>24</sup> It also prohibits many employers from asking you about your criminal record or running a background check until after they have interviewed you at least once.<sup>25</sup> (see page 2 for an explanation of covered employers/positions)

**When Can an Employer Ask About My Criminal Record or Run a Background Check?** After the first interview.<sup>26</sup>

### **What if I Voluntarily Disclose Information About My Record Before or During the First Interview?**

If you voluntarily disclose information about your record, the employer may *immediately* ask you additional questions about your record without waiting until after the first interview.<sup>27</sup>

### **Can an Employer Refuse to Hire Me Because of My Record?**

Yes, unless your *entire* record has been expunged.<sup>28</sup> The OCA does *not* prohibit an employer from refusing to hire you based on your record. However, Title VII of the Civil Rights Act of 1964 does give applicants some protection.<sup>29</sup>

**Does the OCA Apply to Advertisements for Jobs?** Yes. The OCA prohibits covered employers from stating in a job advertisement that they will not consider any applicant who has been arrested or convicted of one or more crimes or offenses.<sup>30</sup>

**Who Enforces the OCA?** The Department of Labor and Workforce Development: Division of Wage and Hour Compliance.<sup>31</sup>

### **How Do I File a Complaint Under the OCA?**

- **In Person:** Visit a One-Stop Career Center: <http://jobs4jersey.com/jobs4jersey/jobseekers/oscc/>
- **By Mail, Fax, or Email:**
  - Download Labor Law Complaint form MW-31C: [http://lwd.dol.state.nj.us/labor/forms\\_pdfs/lsse/MW-31C.pdf](http://lwd.dol.state.nj.us/labor/forms_pdfs/lsse/MW-31C.pdf)
    - Under the heading “**Complaint Details**,” check “Ban the Box” and provide a detailed explanation:
      - “The job application has a question asking about the applicant’s criminal record.”
      - “The job advertisement says that no one with a criminal record may apply.”
      - “The employer asked me about my criminal record during my first interview.”
      - “My record is expunged but the employer refused to hire me because of my record.”
    - **Attach** any documents to help support your complaint (i.e. the job application)
    - **Mail** your completed claim form to:
      - Division of Wage and Hour Compliance  
P.O. Box 389  
Trenton, NJ 08625-0389
    - **Fax** your completed claim form to: (609) 695-1174
    - **Email** your completed claim form to: [wage.hour@dol.state.nj.us](mailto:wage.hour@dol.state.nj.us)
  - To ask questions about the complaint process, call (609) 292-2305

**SEE REVERSE SIDE FOR AN EXAMPLE OF HOW TO COMPLETE THE COMPLAINT FORM.**

## Example of how to explain a violation of the OCA on the Labor and Workforce Development Complaint Form:

### Complaint Details

20. Explain why you believe the business in item #12 violated the law. Attach any documents that support your complaint.

- Ban the Box – Opportunity to Compete for Persons with Criminal Records N.J.S.A. 34:8B-1 et seq.
- Unemployed Need Not Apply – Prohibited Job Advertisements N.J.S.A. 34:6B-1 et seq.
- Health Benefits – Notice Required by Employer of Change N.J.S.A. 34:11A-16 et seq.
- Records Required Relative to Collection, Transportation of Solid Waste N.J.S.A. 34:11-68
- Other – Please explain.

The job application has a question asking about the applicant's criminal record

### May I File an Anonymous claim?

Yes. To file an anonymous claim, write "ANONYMOUS" in the name section of the claim form, and leave the address blank. You must file your claim by mail or fax; you cannot file your claim by email and remain anonymous.

### What Employers ARE Covered by the OCA?

To be covered, an employer must:

- do business, employ persons, or take applications for employment within New Jersey, AND
- employ 15 or more employees over 20 calendar weeks.<sup>32</sup>

This includes:

- Private employers
- State, county, and municipal governments and agencies
- Job placement, referral, and other employment agencies

### What Positions ARE Covered by the OCA?<sup>34</sup>

The position must be in whole or substantial part within the State of New Jersey

Covered positions include:

- any position to work for an employer for a wage, salary, fee, or payment to perform work (*subject to the exempted positions listed in the column to the right*)
- interns and apprentices (*even if unpaid*)
- temporary or seasonal positions
- work through the services of a temporary or other employment agency

### What Employers are NOT Covered by the OCA?

- The federal government or any federal agencies<sup>33</sup>

### What Positions are NOT Covered by the OCA?

- Directors or Trustees<sup>35</sup>
- Independent contractors<sup>36</sup>
- Positions in:
  - Domestic service at a home<sup>37</sup>
  - Law enforcement<sup>38</sup>
  - Corrections
  - The judiciary
  - Homeland security
  - Emergency management
- Positions where:<sup>39</sup>
  - a criminal background check is *required* by law
  - a law *disqualifies* applicants from the position based on the applicants' criminal records
  - a law restricts the ability of employers in that specific business or industry ability to hire employees with certain criminal records
  - For a full list of such laws, visit <http://www.abacollateralconsequences.org/search/?jurisdiction=33>
- Positions designated by the employer to encourage the employment of persons with criminal record<sup>40</sup>