Fair Chance Act Failures? Employers' Hiring of People with Criminal Records

Sharon S. Oselin, Justine GM Ross, Qingfang Wang
University of California, Riverside

Wei Kang
University of North Texas

Direct correspondence to Sharon Oselin, University of California at Riverside, School of Public Policy, 4127 INTS, Riverside, CA 92521 (email: soselin@ucr.edu)

Abstract:

Research Summary

This article examines the efficacy of the California Fair Chance Act (CFCA) policy—legislative stipulations regarding employers' hiring of individuals with criminal records—on practices and outcomes in two Southern California counties during 2021. We rely on survey and experiment data with 542 hiring decision-makers to investigate employer and personal compliance with the CFCA, whether applicant appeals affect employers' willingness to hire them, and heterogeneity in treatment effects across firms and industries. Close to 80 percent of hiring decision-makers violate the CFCA by obtaining background information before they extend an offer, appeals have a minimal impact on hiring outcomes, and firm-level characteristics continue to shape hiring practices to some extent.

Policy Implications

While certain firms comply with the relatively new CFCA, most employers violate it by seeking applicant criminal background information, a practice which has profound consequences for those with criminal records as well as other disadvantaged groups. This finding underscores the discrepancy between de jure and de facto policy practices. Better statewide enforcement of the CFCA coupled with increased employer educational training could help reform it and improve policy adherence. Given it is a young policy, future research should continue to assess the CFCA's efficacy over time.

Introduction

Estimates suggest that approximately one-quarter of the American adult population possesses a criminal record (Jacobs, 2015), a figure that contains a disproportionate number of individuals from minority groups (Uggen et al., 2006). While scholars emphasize the various factors that are integral to successful reentry—such as stable housing, supportive prosocial relationships, and more—employment is understood as central to post incarceration reintegration and lowered recidivism (Apel & Horney, 2017; Sampson & Laub, 1993). Employment not only contributes to one's financial stability but also enhances self-worth and can lead to improved social relationships (Western, 2018). The rub is that stable, well-paying jobs, which are often greatly desired by those with records, too frequently remain elusive.

Past research on reentry and employment documents an array of institutional and societal barriers that can thwart job attainment for this population, including statistical discrimination, stigma, liability concerns, repetition risk, and licensure exclusions (Smith & Broege, 2020; Sugie et al., 2020; Vuolo et al., 2017). As such, employer-based concerns fuel the increasingly widespread use of background checks to screen out justice-involved applicants (Uggen et al., 2014). Applicants, who are keenly aware of the negative stereotypes about them, enact various impression and stigma management strategies to overcome employer hiring aversion, such as voluntarily disclosing their past criminal records or offering appeals (Goodman, 2020). Certain studies find these efforts can enhance employment outcomes (Heydon & Naylor, 2018), yet this places a tremendous burden on the applicant to cultivate a changed impression among hiring decision-makers.

Employment policies, in contrast, have potential to level the employment playing field throughout the hiring process. To begin to tackle long standing discrimination against people

with records, many states have passed legislation over the past few decades that offers greater employment protection for this population (NELP, 2021; Von Bergen & Bressler, 2016). The most common manifestation is found in Ban the Box (BTB) policies, which primarily eliminate questions about one's criminal history from the application. Many BTB policies apply solely to public employers, but a growing number of states include both private and public realms (NELP, 2021). Building upon BTB, some states enacted more stringent legislation that adopts U.S. Equal Employment Opportunity Commission (EEOC) recommended "fair chance" employment guidelines to further advance job prospects for the justice-involved. Passing one of the most expansive laws in the country in 2018, California enacted the California Fair Chance Act (CFCA) for public and private employers, which includes (1) 'banning the box', (2) prohibiting employers from conducting background checks until *after* a conditional offer of employment is made, (3) mandating an individualized assessment if a record is uncovered, and (4) allowing applicants to appeal rescinded employment offers when due to past crimes. To date, this is the strongest state law in the U.S. regulating hiring practices for private-sector employment (NELP, 2021). Compared to most BTB policies, the CFCA ostensibly offers greater protections for individuals throughout the hiring process and well beyond the application stage.

Despite their potential, the extent to which policies mitigate employers' discriminatory practices and improve employment opportunities for the justice-involved remains an ongoing topic of investigation (Schneider et al., 2022). Recent studies that attempt to evaluate BTB policies on employment outcomes offer mixed conclusions: some find improvements due to these policies (Craigie, 2020) while others show ongoing employer discrimination that disproportionately affects applicants of color (Doleac & Hansen, 2020). Given there are even fewer policies that endorse EEOC protective guidelines, the body of research on the efficacy of

"fair chance" policies is particularly sparse, leaving substantial room for assessment about their implementation and impact.

To address this gap, the current study evaluates whether the CFCA affects employers' hiring practices and tests the efficacy of key provisions of this fair chance policy. It is guided by the following research questions: (1) To what extent do employers comply with the CFCA and how is this reflected in their hiring practices toward those with records? (2) Are applicant appeals an effective strategy to counter employer hiring aversion? (3) Do firm characteristics produce differential outcomes for the above? We draw on original survey and experiment data with 524 hiring decision-makers in California's Inland Empire (San Bernardino and Riverside counties), which was collected in 2021. Our study offers implications for both theory and policy making.

Reentry and Employment

Employer Aversions toward Hiring People with Criminal Records

Despite its established importance, there are many barriers to job attainment in the formal economy for these individuals due to a mismatch in applicant skills and position requirements as well as an array of institutional impediments. Individuals with records—and especially those with a history of incarceration—are likely to have disrupted work experience, struggle to meet the educational or skill requirements for employment, and have diminished human capital skills (Pager, 2007; Visher et al., 2005). Even when an individual is technically qualified, their record may mark them outright as someone with a "negative credential" that confers both lower status and stigma unto them (Pager, 2003).

Internet access to criminal history information makes it especially easy for employers to conduct background checks, a frequently used strategy among US employers when screening

applicants (Jacobs, 2015; Uggen et al., 2014). Although sometimes made available by governmental sources, private companies have increasingly entered this arena to profit off compiling and releasing criminal records on the Internet (Corda & Lageson, 2020). While both formal and informal data can be misleading, incomplete, or outdated (Lageson et al., 2021), consumers of this information often attribute guilt to such individuals despite possible inaccuracies (Jacobs, 2015). Thus, background searches enable employers to screen out individuals with records early on due to concerns about liability or repetition risk, statistical discrimination, stigma or other issues (see Sugie et al., 2020; Vuolo et al., 2017).

Theories surrounding negligent hiring liability and risk management assert employers are reluctant to hire those with records because they worry about potential negative consequences for their organization (Sugie et al., 2020). Repetition risk explains employers' reliance on credible cues about past behavior to predict an applicant's likelihood of engaging in future illegal behavior when making hiring decisions (Jacobs, 2015), especially when an applicant's past conviction is of a serious or violent nature (Heydon & Naylor, 2018). This information is ostensibly used to gauge risk and mitigate liability for damages to the company, or its customers, should an employee engage in workplace crime at some future point. Yet, McElhattan's (2022) study finds that rather than rely on the treatment of criminal records within negligent hiring case law as a guidepost for determining liability, criminal records checks have instead become the default practice within human resources fields. In cases when details about an individual's record are unavailable, some employers resort to statistical discrimination when hiring – using alternative information, like race or gender, to proxy involvement with the justice system (Doleac & Hansen, 2020).

To some extent, employers' willingness to hire individuals with a criminal past fluctuates

depending on the crime, its severity, and length of time since occurrence (Holzer et al., 2007; Uggen et al., 2014). People with felony charges and histories of sexual crimes face greater employer hiring aversion compared to those convicted of misdemeanor and drug crimes (Atkin & Armstrong, 2013). Because there is uncertainty in gauging risk of employees with records, some employers may eschew hiring these individuals altogether as a precautionary measure (Williams, 2007).

Employers situated in certain fields and occupations are prohibited from hiring individuals with records due to policy exclusions, including licensure requirements and firm level policies. There are approximately 800 banned occupations in the US for individuals convicted of felony offenses, either through law, licensure requirements, or other regulatory policy (Bushway & Sweeten, 2007; Jacobs, 2015), including occupations like teachers, daycare workers, and nurses. And many states have outright prohibitions on hiring people with criminal records for public jobs (Harris & Keller, 2005).

Unlike the theories above, discrimination born of stigma is irrational and based on broad stereotypes about those who are justice-involved, subjecting them to labels and discrimination that can thwart their employment opportunities. Employer stigma can stem from perceptions about trustworthiness, morality, reliability, and temperament for this population (Bushway et al., 2007; Oluwasegun & Ritter-Williams, 2019) or more generalized stigma whereby mere contact with the justice system marks an individual as "undesirable" regardless of the offense severity (Ispa-Landa & Loeffler, 2016). The race and ethnicity of applicants can also produce additional stigma among employers and ultimately compound disadvantages for minority individuals who possess records (Western & Sirois, 2019).

Past research also concludes that demand-side barriers vary systematically across

industry, job type, and employer size. Historically, industry and job type not only affected the prevalence and wording of criminal record questions on applications but were linked to disparate hiring outcomes (Holzer et al., 2001). Industries like construction/manufacturing, retail and transportation are more willing and likely to hire those with felonies (Nally et al., 2011; Sugie et al., 2020). In addition, company size matters in that larger businesses tend to conduct background checks and demonstrate more favorable attitudes towards hiring this population compared to smaller businesses (Lukies et al., 2011). Most of the studies published on this topic were conducted prior to Ban the Box type legislation; therefore, we know little about how recent policy changes affect these patterns (for exception see Schneider et al., 2022). The current study offers a timelier assessment of whether employers abide by the CFCA, and whether firm characteristics continue to matter for employment outcomes after its passage.

How Justice-Involved People Contend with Employment Obstacles

The flip side to employment barriers is how individuals with records exert agency throughout the hiring process, including their attempts to influence employment outcomes. Impression management theory is prominent within this body of work, arguing that individuals actively curate their self-presentation to influence how others perceive them (Goffman, 1959). Justice-involved people anticipate being stigmatized or otherwise devalued, prompting them to use various impression management techniques to distance themselves from the mark of a criminal record and its associated stigma (Winnick & Bodkin, 2008). Potentially lessening stigma, audit studies demonstrate that having direct interpersonal contact with hiring-decision makers increases the odds of callbacks for job seekers with records (Pager et al., 2009; Uggen et al., 2014). During interviews, individuals may withhold information about their criminal history or selectively disclose it (Augustine, 2019; Goodman, 2020; Winnick & Bodkin, 2008),

acknowledge and apologize for past behavior via appeals (Ali et al., 2017; Krylova et al., 2018), or explicitly signal desistance (Reich, 2017).[1] Studies show that hiring managers' perceptions of candidates with records typically improve when they enact these strategies (Ali et al., 2017; Krylova et al., 2018; Reich, 2017). Voluntarily disclosing information about their past during interviews can be an especially effective tactic since certain employers use it to gauge moral character and honesty (Heydon & Naylor, 2018). Overall, these tactics may potentially help individuals to combat negative stereotypes, influence how prospective employers perceive their candidacy, and boost hiring odds.[2]

Additionally, some applicants can obtain certificates of rehabilitation (COR), which remove automatic exclusionary barriers to licensures or certain occupations for those with records (McCann et al., 2021; Radice, 2012). CORs involve a state review process, including an application for consideration as well as formal approval, and their availability and applicant eligibility varies across states. In California, a COR can possibly restore eligibility rights for state licensures or particular occupations as well as some civil rights for those with records, signal individuals have been "rehabilitated," can potentially reduce liability for employers, and automatically initiate an application for state pardon (McCann et al., 2021), all of which may expand job prospects and hireability. In general, CORs tend to be underutilized by those with records and there is minimal scholarly understanding of how and when employers use these certificates in their decision making (Radice, 2012). In contrast to this formal state-recognized certification that can expand employment prospects for those with records, appeals are informal practices used by applicants to influence employers' impressions further along in the hiring process.

Despite the above contributions, the impact of disclosures and appeals on employers'
willingness to hire people with criminal records requires greater scrutiny. This research almost
always focuses on impression management strategies at the *front end* of the hiring process,
especially during the application or initial interview stages. To our knowledge, there is sparse
investigation of the efficacy of applicant appeals when given at the tail end of the hiring process,
such as after a conditional offer of employment has been extended and rescinded based upon a
background check. This is especially pertinent for more stringent policies like the CFCA, which
specifies that employers provide individual assessments reporting why an offer was rescinded
after learning of one's criminal record and gives applicants the right to appeal that decision.[3] Our
analysis contributes to this literature by examining whether the presentation of late-stage appeals
affect employers' stated willingness to re-extend job offers.

Protective State Policies and Employer Practices

Ban the Box (BTB) policies are a recent legislative response to combat employment
discrimination against those with criminal histories. They target the front-end of the hiring
process and eliminate questions regarding criminal records from applications (LaPlant & Vuolo,
2021).[4] BTB policies are intended to allow applicants with records to have a fair chance of
obtaining an interview, at which point they can engage in impression and stigma management
strategies. Approximately three-quarters of US states have implemented BTB laws, with an
additional 150 cities and counties following suit, resulting in four-fifths of Americans residing
within BTB jurisdictions (NELP, 2021). All BTB policies apply to public employers and roughly
40 percent extend to private employers (NELP, 2021).

In theory, BTB policies should lessen discriminatory hiring practices and expand job
opportunities for those with records, but evidence of their effectiveness is less clear cut. While

some research concludes BTB laws are linked to increased employment (Craigie, 2020), others find these policies are insufficient when employers engage in statistical discrimination to proxy system involvement (Agan & Starr, 2018; Raphael, 2021), disregard the law entirely (Kelly, 2010), or only engage in symbolic compliance (Edelman, 1992; Schneider et al., 2022). In one of the few studies on hiring decision-makers' changes over time, Schneider and colleagues (2022) find the vast majority of Minnesotan companies comply with BTB by removing criminal record questions from applications. However, they also show companies tend to have continuity in their hiring practices and attitudes regarding applicants with records pre- and post-BTB, which suggests the policy did not cause a significant shift in either. Even with these more recent studies, there is still minimal understanding about how employers respond to BTB type laws, whether hiring practices are meaningfully modified in response, and if they produce attitudinal or behavioral change among hiring decision-makers.

Certain states, and recently, the federal government, integrated recommendations from the EEOC that go beyond "banning the box" to include "Fair Chance" policy provisions, which offer expanded protections for the justice-involved. California enacted the Fair Chance Act in 2018, which applies to both private and public employers. The CFCA includes (1) 'banning the box', (2) prohibiting employers from considering an applicant's criminal history until *after* a conditional offer of employment is made, (3) mandating employers to produce individualized assessments if a record is uncovered, and (4) allowing applicants to appeal rescinded employment offers when due to past crimes. The appeals process is a unique provision of the CFCA and creates a formal channel for applicants to engage in impression management strategies. At the same time, it places tremendous pressure on individuals to advocate on their behalf and enforce the law by reporting complaints to the state, a daunting and laborious process.

10

To date, this is the strongest state law in the U.S. regulating hiring practices for private-sector employment (NELP, 2021).

Despite burgeoning research on the effects of BTB, scholars know little about whether more stringent protective policies (such as "Fair Chance" Acts) affect employer hiring practices regarding those with criminal pasts. Now in its fifth year, the CFCA offers a ripe opportunity to investigate the extent to which hiring decision-makers continue to consider applicants' criminal history prior to extending an employment offer, the actual hiring practices of people with records, and whether the unique appeal provision sways employers' willingness to hire an individual with a record. We address these research questions by drawing on original survey and experimental data.

Design

We use an original dataset from an internet survey of adults who work in Riverside and San Bernardino counties (subsequently called IE, meaning Inland Empire) and are involved in their employer's hiring decisions. In this study, the IE is co-extensive with the Riverside-San Bernardino-Ontario metropolitan area and is the thirteenth most populous metropolitan region in the country and the third largest in California. The IE is east of Los Angeles County, covers nearly 30,000 square miles, and has 4.6 million residents.

The IE has a notably higher concentration (location quotient (LQ) > 1.3) of Utilities, Construction, Retail Trade, and Transportation and Warehousing and a lower concentration (LQ <0.8) of Professional, Scientific, and Technical Services, Management of Companies and Enterprises, Educational Services, and Arts, Entertainment, and Recreation business establishments than California.[5] Compared with the nation, the IE has a distinctly higher concentration of businesses in Wholesale Trade and Transportation and Warehousing (LQ > 1.2),

and a lower concentration in Finance and Insurance, Professional, Scientific, and Technical

Services, Management of Companies and Enterprises, and Arts, Entertainment, and Recreation

(LQ < 0.8). Although the IE has a higher concentration of small- and medium-sized business

establishments (5 - 249 employees) than California and the nation, it has a lower concentration of

very small businesses (<5 employees) and large businesses (>250 employees) (see Figure 1).

[Figure One About Here]

Our survey was administered between June and August of 2021 using B2B (business-to-

business) panel maintained by Dynata and a B2B list maintained by Dun & Bradstreet (D&B).

Dynata invites individuals who are employed in a given region to become panel members and

then collects demographic information on each individual who accepts in order to confirm the

panel is representative of the population across various demographic indicators. D&B maintains

a list of employees in the IE that is updated multiple times every day through their proprietary

business information platform. Both sources are commonly used for market or survey research

given the breadth of their samples and their strength in maintaining current information on an

individual's employment status, employer, role, location, and other relevant indicators. Together,

these sources allowed us to reliably target hiring decision makers employed in the IE but like all

non-probability samples there is the potential for self-selection bias. For example, it is possible

respondents from these sources may be different from the general population in that they are

likely more tech-savvy, as they are comfortable navigating an online survey. Further, there is a

possibility of topical self-selection wherein the publicized topic of the study influences who

responds to an invitation to participate. With regard to generalizability, we believe these effects

are negligible in extrapolating our findings to the larger hiring decision-maker population as the

workforce is highly reliant on technology, our survey was accessible from desktop and mobile

devices, and we used a broad prompt (e.g., "a study of hiring practices in the IE") when soliciting participation that obscured the more polarizing focus of our study (e.g., attitudes toward hiring individuals with records).

The Dynata panel included 1,594 unique individuals and the D&B list included 1,023 unique individuals who met our initial criteria of being involved in the hiring process at a company with more than 5 employees in the IE.[6] Our criteria of "involved in the hiring process" refers to individuals who either participate in hiring and on-boarding globally for their company or who make hiring decisions locally for their respective department. The former often includes representatives from human resources, talent acquisitions, and other similar departments, whereas the latter more often includes mid-level managers and directors from non-personnel units. We refer to these individuals as hiring decision-makers.

Potential respondents were invited by email to participate in a survey on hiring practices in the IE. Because we are interested in a specific subset of hiring-decision makers whose employers are subject to the CFCA, respondents were screened based on their age (18 years or older), location of their employer (Riverside and San Bernardino counties), size of their employer (5+ employees), whether their company hired for a non-degreed or entry-level position since the CFCA was enacted, and the length of their tenure with their employer (6+ months). Respondents are also asked to affirm they are involved in the hiring process either globally across the company or locally within their own department.

For the individuals contacted through the Dynata panel (n = 1,594), 72.6 percent opened the link (n = 1,158). Of these people, 52.5 percent (n = 609) were screened out because they did not meet our criteria, did not consent to the study, or did not finish the survey (9.1%; n = 105). Our Dynata sample includes 27.8 percent (n=444) of those originally contacted and 38.3 percent

of those who clicked on the survey link. For individuals contacted using the D&B list (n = 1,023), 28.2 percent opened the link (n = 288). Of those who opened the link, 62.8 percent were screened out (n = 181) and 9.3 percent did not complete the survey (n = 27). Our D&B sample includes 7.8 percent (n = 80) of those originally contacted and 27.8 percent of those who clicked on the survey link. These samples are descriptively comparable and mirror the demographics of the region. In summary, our sample includes 524 hiring decision-makers recruited from Dynata's panel and D&B's list who meet our inclusion criteria and completed the entire survey.

Respondents who consented to participate and successfully completed the screeners were asked a battery of questions related to their employer's firm-level characteristics, the typical hiring process, background checks and inquiry, their attitude toward hiring and working with individuals with criminal records, their employers' actual hiring of those with records, and their familiarity with the CFCA. The instrument included 65 questions and the average length of time to complete the survey was approximately 14 minutes.

Experimental Treatment

The experiment embedded in the survey assesses whether employers that rescind conditional offers of employment reevaluate their decision when presented with an appeal that provides applicants to engage in impression management strategies by presenting narratives of personal change or growth related to their criminal histories to assuage employer concerns. When appeals work, the employer's willingness to hire them increases and the initial offer is reinstated. To date, little is known about whether back-end appeals affect employer attitudes and hiring outcomes.

To test the impact of an appeal on hiring decision-makers' willingness to re-extend an offer of employment, respondents were randomly assigned to receive a prompt about one of three hypothetical applicants: (1) an applicant whose conditional offer of employment is revoked

after a background check finds he was convicted of felony aggravated assault 18 months prior; (2) an applicant whose conditional of offer of employment is revoked after a background check finds he was convicted of felony aggravated assault 18 months prior and provides a written appeal; and (3) an applicant whose conditional offer of employment is revoked after a background check finds he was convicted of felony aggravated assault 5 years prior and provides a written appeal. Recent criminal justice reforms in California reduced the penalty for or reclassified the severity of drug offenses, so there is some ambiguity—particularly among non-experts—as to an individual's type or level of contact with the justice system for drug offenses. To reduce the likelihood of respondents having different perceptions of the level of interaction with the justice-system based on the treatment, we chose a conviction that clearly and widely signals a felony-level offense with a likely record of incarceration.

We also do not signal any information about Jon outside of his name, gender, and the content included in the control/treatments. Although we recognize the important moderating effect of demographic characteristics—and especially race—on perceptions about applicants (e.g., Pager, 2007), we did not want to confound race with record effects and therefore decided to omit this characteristic in our appeal.

Both treatment groups received the same written appeal (Appendix A), in which Jon acknowledged his conviction, says he completed his sentence and an anger management program, no longer associates with his old group of friends, and is an engaged community member. He reiterated the incident was in his past and that he believed he would be a responsible employee if given the chance to work. This information reflects the broader impression management literature, which finds applicants who acknowledge their conviction, disclose information about their situation, communicate contrition and growth, and explicitly signal

desistance are perceived more favorably by hiring decision-makers (Ali et al., 2017; Krylova et al., 2018; Reich, 2017). These justifications of changed behavior have been tested and found to be effective methods of signaling remorse, which is correlated with positive hiring recommendations (Ali et al., 2017; Gardner et al., 2023). In our pre-study conversations with re-entry service providers and justice-involved individuals, it was affirmed this type of information—specifically, acknowledging the conviction, taking responsibility, and providing concrete examples of how the applicant turned their life around—is typically included in written appeals. Therefore, our letter is likely similar to one that a hiring decision-maker in the region would receive in terms of content.

Given this theoretical basis, we anticipate the applicant who authors an appeal and engages in impression management to be perceived as more likely to be hired than the applicant who does not. Consistent with prior research on temporal immediacy and EEOC guidelines, we also anticipate the applicant who authors an appeal and was convicted five years previous will be perceived more favorably (on average) than an applicant who does not author an appeal or who authors an appeal 18 months post-conviction. However, we do not anticipate these results will be statistically significant as five years is a relatively short period of time and the EEOC suggests it takes 10-15 years for conviction risk to return to the levels of the normal population (EEOC 2012; Holzer et al. 2007; Jones, 1991).

Data & Methods

Respondents answered survey questions that provided insight into their company's hiring practices and questions related to the experimental treatment.

Firm-Level Characteristics

16

We asked respondents about the size of their employer, the industry in which they work, whether their employer had a formal background check policy, the frequency of background checks (*always*, *sometimes*, *rarely*, *never*), whether there was a collective bargaining agreement, the type of employer (*public*, *non-profit*, *private*), the percent of positions that require unskilled labor, and whether their firm changed their hiring policy in response to the CFCA's passage (*yes, no*). With respect to formal background check policy, we do not distinguish between policies that are imposed internally or externally (e.g., by licensing, professional, or regulatory boards) as our focus is not on who is running or mandating the checks, only whether or not there is a policy to conduct them. These firm-level data are based on employee recall and used as independent variables to predict hypothetical and actual willingness to hire someone with a criminal record, among other outcomes.

Prior studies often exclude public, healthcare, and education employers from their analyses as these were historically the industries most likely to have outright legal prohibitions against hiring individuals with criminal records for certain positions. We include these industries because the CFCA applies to both public and private organizations. Moreover, only a small proportion of employers (e.g., employers with fewer than five employees, law enforcement agencies, those hiring for positions that require background checks per another law, like licensures) are exempt (NELP, 2019). Our sampling design eliminates firms with fewer than five employees, and we systematically compare public and private sectors and find the effects of Post-CFCA policy changes do not differ in meaningful ways across them (NELP, 2019).[7] As such, it would be an overly broad restriction to exclude these industries entirely from our analysis. We ultimately group *Public, Healthcare, and Education* into a single category to acknowledge that although the majority of these employers are subject to the CFCA in an

identical fashion to other employers, they are still the most likely to be able to engage in legal discrimination against those with criminal records given licensures and policy restrictions.

Background Checks and Inquiry

We asked respondents whether their employer had a formal background check policy (which may include internally imposed policy or an external requirement by a licensing board/legislation), and about the relative frequency with which they ran background checks.[8] The existence of a background check policy is measured as dichotomous and the frequency of background checks is ordinal (*never*, *rarely*, *sometimes*, *always*). This variable is included as one of our dependent variables when examining the effect of various employer features.

The CFCA language stipulates employers may not ask an applicant about their record or otherwise consider criminal history prior to a conditional offer of employment, with some exceptions. Drawing from this, we also asked respondents if and when they look into an applicant's background, including through informal means (*after receiving their application, but prior to an interview; after an interview, but prior to an employment offer; after an employment offer has been made; never*). Below is the exact survey wording:

> "Sometimes hiring managers look into an applicant's background and learn about their criminal history before hiring. By *look into an applicant's background* we mean any direct inquiry into an applicant's criminal history - like a question on the application or a question during an interview - or any indirect search - like a Google search of the person's name - that is conducted to learn more about criminal history and has the potential to return this information.
>
> At what point during the hiring process do you typically look into the applicant's background?"

Because our respondents were prompted to indicate when (if ever) they looked into someone's background with the intention of learning about their criminal history, we operationalize this as

"considering" an applicant's criminal record. We include this measure as one of our dependent variables to gauge compliance.

Willingness to Hire Versus Actual Hiring Practice

Respondents were prompted to think about the last entry-level or non-degreed position their company hired for and whether they would have "seriously considered an applicant" who was convicted of "a drug-related offense", "a property-related offense", and a "violent offense", which results in an ordinal measure of willingness to hire (*definitely not*, *probably not*, *might or might not*, *probably yes*, *definitely yes*). Recognizing a respondent may find it socially desirable to report they are willing to consider an applicant with a criminal history, we also asked whether their employer had hired someone with a criminal history in the past 4 years (e.g., since the CFCA was enacted). These measures allow us to cross-reference self-reported hypothetical hiring behavior with self-reported actual hiring behavior and both are included in our regression models as dependent variables.

Experiment - The Effect of Appeals

In the experiment, we test the effect of appeals on hiring decision-makers' willingness to reconsider and re-extend a candidate's rescinded offer of employment. Willingness to re-extend an offer of employment is included as a dependent variable and measured using the same 1 to 5 scale, where 1 indicates the respondent is *Very Unlikely* to re-extend, 3 is *Neither Likely Nor Unlikely*, and 5 is *Very Likely*.

We also analyze the characteristics of employers that are convinced to re-extend offers of employment after receiving an appeal from an applicant whose conditional offer was revoked due to their criminal history. Here, we consider a respondent Swayed by an Appeal if they indicate they believe their employer was *Somewhat Likely* or *Very Likely* to re-extend an offer of

employment after reviewing the appeal. A respondent who indicates they are *Very Unlikely*, *Somewhat Unlikely*, or *Neither Likely Nor Unlikely* is coded as Unswayed by an Appeal.

Analysis

After aggregating descriptive statistics on employee and employer characteristics, including presence of a formal background check policy and frequency of background checks, our analysis proceeds in four primary stages. First, we consider the effect of firm-level characteristics on whether a company has a formal background check policy (logistic regression), the frequency with which they run background checks (ordered logit regression), the likelihood the respondent would have seriously considered someone with a criminal history for the last entry-level, non-degreed position hired for (ordered logit regression), and whether their employer has hired someone with a record in the past four years (logistic regression). Second, we consider the relationship between firm-level characteristics—including whether the firm modified their hiring policy post-CFCA—and whether the respondent would have been willing to consider an applicant with a criminal history for the last entry-level/non-degreed job they hired for using an ordered logit model and whether the respondent self-reported that they/their employer violated the CFCA using a logistic regression model. Third, we move to our experimental data and model willingness to re-extend an offer of employment as a function of whether or not the respondent received an appeal (Mann-Whitney U test). Finally, we assess the correlation between being swayed by an appeal (moving from neutral, unlikely, or very unlikely to re-extend an offer to likely or very likely) and willingness to consider an applicant with a record and the employer having hired someone with a record in the past four years using a chi-squared test.

Results

In this section, we begin by presenting a descriptive summary of our sample, then discuss patterns in aversion to hiring, our sample's use of background checks and reported violations of the CFCA, and end with the CFCA's effect of appeals on willingness to hire applicants with records.

Table 1 provides descriptive summary of the individual-level characteristics of our respondents and Table 2 provides a summary of their employers' firm-level characteristics. Just over half (50.76%) of our sample identifies as female and a plurality (34.35%) are between the ages of 35 and 44 and identify as White (non-Hispanic) (40.65%). The majority of our respondents have at least a bachelor's degree and are a mid-level manager or higher within their organization. Their employers fit within six industry categories, including Labor (12.21%), Manufacturing (8.78%), Trade (8.78%), Business & Professional Services (29.77%), Education, Health, and Public Services (31.11%), and Service (11.07%). The employers are primarily private companies (63.55%), and typically have less than 25 percent of their total positions occupied by unskilled workers (55.24%). The overwhelming majority of our respondents report their employer has a formal background check policy (83.02%)—including inquiry into criminal history, prior employment, and references, among other strategies—and roughly half report their employer changed their hiring policy in some way after the CFCA was passed (50.95%).

[Table 1 About Here]

Despite the CFCA's enactment, we expected hiring decision-makers' concerns about hiring individuals with records to persist. Indeed, only 25.8 percent of hiring decision-makers indicated they would have seriously considered someone with a criminal conviction for the last entry-level/non-degreed position they hired for though there is variation based on the type of crime. For example, drug-related convictions (20.2%) are perceived more favorably than

property- (11.6%) and violence-related (8.6%) offenses. Over half of our respondents cited concerns about criminal activity in the workplace and/or drinking/drug use as driving their reluctance to hire those with records.

Patterns in Aversion to Hiring

Research that predates the CFCA documents firm-level characteristics—such as industry and company size—are predictors of whether a company has a formal background check policy and is willing to hire people with criminal records (e.g., Holzer et al., 2001; Lukies et al., 2011; Nally et al., 2011). We investigate whether the CFCA alters these patterns or if they persist in the IE by modeling the effect of company size, industry, company type, and percent of unskilled positions on whether a respondent's employer has a formal background check policy and the frequency with which they conduct background checks.[9] Firms with 100-499 ($b = 1.610, p < .001$) and 500+ employees ($b = 1.246, p < .001$) are more likely to have formal background check policies relative to firms with 5-99 employees. Those that require more physical work—like Labor ($b = -.702, p < .1$) and Manufacturing ($b = -1.272, p < .01$) industries—are less likely to have formal background check policies than the Professional Services industry, holding other variables constant. Moreover, we find larger firms (100-499 employees: $b = 0.759, p < .001$; 500+ employees: $b = 0.966, p < .001$) and those in Education, Health, and Public Services ($b = .447, p < .1$) conduct more frequent background checks, relative to those with 5-99 employees and those in Professional Services. Manufacturing firms ($b = -0.884, p < .001$) conduct less frequent background checks than the Professional Services industry, while the type of employer (non-profit, private, or public) and percent of positions requiring unskilled labor remain insignificant predictors of background check policies and frequency.

We extend this analysis to model firm-level characteristics as predictors of whether a hiring decision-maker would have seriously considered an applicant with a criminal history for the last entry-level/non-degreed position they hired for and whether their employer has hired someone with a criminal history within the past four years. The former investigates the extent to which firm-level factors systematically act upon individual decision-makers' discretion when making hiring decisions. The latter provides insight into actual behavior as opposed to attitudes or hypothetical behaviors, so it is a stronger test of employers' willingness to hire people with records. We find decision-makers in Education, Health, and Public Services ($b = -.739, p < .01$) are less likely to seriously consider applicants with records, relative to those in Professional Services. Respondents employed by private companies ($b = .480, p < .01$), non-profit organizations ($b = .919, p < .01$), and those who work for firms with over 25 percent of positions requiring unskilled labor ($b = .0.474, p < .01$) are more likely to do so, relative to public employers and firms with a smaller percentage of unskilled roles. Finally, we find larger firms (100-499 employees: $b = 0.456, p < .1$; 500+ employees: $b = 0.663, p < .05$), those in Labor ($b = 0.623, p < .1$), private ($b = 0.480, p < .1$), or non-profit organizations ($b = 1.047, p < .05$), and those with more than 25 percent of positions requiring unskilled labor ($b = .541, p < .05$) are more likely to have hired someone with a record in the past four years.

The results of these analyses (Appendix B) are largely consistent with prior work, which find larger firms are more likely than smaller firms to have formal background check policies. In addition, industries that rely on physical labor (e.g., construction or mining) and those which are not public facing (e.g., hospitality or healthcare) are generally more willing to hire individuals with criminal records.

Background Checks and Reported Violations of the CFCA

We asked respondents about the type of information their employer sought when looking into the background of the applicants for their most recent entry-level/non-degreed position. Over half of respondents indicate their employer formally verifies prior employment (63.9%), contacts references (56.5%), and conducts criminal history checks (55.5%), while less than 5 percent (4.7%) of employers in our sample seek no information outside of what an individual includes on their application or reveals during an interview. Notably, there is a divergence between policy and reported practice: Roughly 83 percent of respondents state their employer has a formal background check policy but only 55.5 percent report their employer exercised this policy for their last hired position.[10]

We also inquired about the timing of when our hiring decision-maker seeks additional information about an applicant's criminal history outside of their application and interview. This is an important distinction, particularly for larger companies, since formal background checks are often conducted by a centralized department. Still, that does not preclude individual hiring decision-makers from conducting their own inquiry into an applicant's background at their discretion and of their own volition. The CFCA explicitly prohibits the consideration of criminal history—regardless of whether the information is gleaned through a formal background check or other methods—*prior* to a conditional offer of employment. We find 79.9 percent of hiring decision-makers report seeking information about an applicant's background through formal background checks or informal inquiry prior to extending a conditional offer of employment. This includes seeking information after receiving an application but before an interview (34.9%) or after an interview but before an offer of employment (45.04%). As shown in Figure 2, only approximately 20 percent of hiring decision-makers in our sample report compliance with the

CFCA in that they or their company does not look into one's background at any point (4.2%) or only after a conditional offer of employment is made (15.84%).

[Figure 2 About Here]

Little is known about the impact of fair chance act policies on willingness to hire and employer compliance with these policies. To address this gap, we model hiring decision-makers' reported willingness to hire someone with a record for the last entry-level/non-degreed position hired for and self-reported CFCA violations as a function of whether the company changed their hiring policy after the CFCA was passed, controlling for other firm-level characteristics. Table 2 reports the findings of these analyses. In Model 1, hiring decision-makers employed by firms that changed their hiring policy in response to the CFCA ($b = .0.435, p < .05$) are more likely to report being willing to consider hiring someone with a record for the last entry-level/non-degreed position hired for, relative to those employed by firms that did not implement policy changes. This relationship could be observed for a variety of reasons, including a true increase in respondents' willingness to hire those with records, a heightened awareness of the socially desirable or even legally acceptable answer signaled by the employer's change in policy, or firms that changed their policy post-CFCA were already more willing to consider those with records than those who did not.

[Table 2 About Here]

In Model 2, hiring decision-makers employed by firms that changed their hiring policy ($b = .0.113, p > .01$) are not any more or less likely to violate the CFCA than those employed by firms that did not change their policy. Put simply, a change in formal hiring policy does not predict compliance with the CFCA in practice.

The Effect of Appeals on Willingness to Re-Extend Employment Offers

The CFCA is unique in that it provides a formal channel for applicants to engage in impression management strategies if their employment offer is revoked because of their criminal record. Although past studies find these strategies can be effective earlier in the hiring process, their efficacy is unclear when offered at the end of the hiring process as prescribed by the CFCA. To test the effect of appeals, we presented respondents with a hypothetical applicant who successfully interviewed for a job with their employer. This person was given a conditional offer of employment which then was rescinded after a background check revealed the applicant was convicted of aggravated assault. Respondents were randomly assigned to the control group (no appeal) or one of two treatment groups (*treatment 1*: appeal, 18 months post-conviction; *treatment 2*: appeal, 5 years post-conviction).

Table 3 presents the mean and median willingness to hire for the control and treatment groups. Recall that willingness to hire is reported on a one to five scale, where 1 is *very unlikely*, 3 is *neither likely/nor unlikely*, and 5 is *very likel*y to re-extend an offer of employment and hire the applicant. Compared with the control ($\bar{x} = 2.48$; median = 2), the average treatment effect (ATE) of the 18-month post-conviction appeal ($\bar{x} = 2.98$; median = 3), *p < .001*) is 0.5 and the ATE of the 5-year post-conviction appeal ($\bar{x} = 3.32$, median = 4, *p < .001*) is 0.84.[11] We also consider the interactive effect between an appeal and the length of time since conviction. Compared with the 18-month appeal, a 5-year appeal results in a 0.34 increase in the mean willingness to re-extend an offer of employment between the first and second treatment groups (*p < .05*).

[Table 3 About Here]

The relevance of firm-level characteristics on employers' willingness to hire individuals with records is well-documented in the extant-literature and replicated here. Thus, we expect

hiring decision-makers' decision to re-extend offers of employment after receiving an appeal may be encouraged or constrained by features of their employer and that these firm-level characteristics may act upon the respondent's willingness to hire in a way that introduces non-random variability into the ATE reported above. We consider heterogeneous effects by exploring the average treatment effect of the treated (ATT) by comparing the treatment effects within sub-groups.

[Figure 3 About Here]

Figure 3 illustrates the mean willingness to re-extend an offer of employment and 95% confidence intervals for each sub-group by experimental assignment groups, including sub-group treated means relative to the treated means of the complete sample. As expected, sub-groups known to be friendlier toward applicants with records—like Labor—have particularly high means across experimental assignment groups while those known to be less friendly toward those with records with more positions exempt from the CFCA—like Education, Health, and Public Services—have lower means. Firms that changed their hiring practices to be CFCA compliant are more persuaded by appeals compared to those who did not, although the reason for this difference remains unclear. This subset of employers may have been motivated to change their policy and conduct individualized candidate assessments out of concern for legal compliance with the CFCA, or they may have been motivated by ethical fairness in hiring and changed their policy to align with their pre-CFCA openness toward hiring those with records (Alder & Gilbert, 2006; Demuijnck, 2009). The former suggests the CFCA drives willingness to hire, while the latter suggests that a preexisting willingness to hire individuals with records drives compliance with the CFCA. Disentangling these effects and establishing clear directionality between legislative policy and hiring policy is an avenue for future research.

Because willingness to re-extend an offer of employment is measured on a scale of 1 to 5 and in whole numbers, we are particularly interested in sub-groups with an ATT that is greater than or equal to one because this signals the group was persuaded to "move up" to the next ordinal level (e.g., from *neither likely nor unlikely* to *somewhat likely*, etc.). The ATT of hiring decision-makers who received the 18-month appeal and work in Trade ($\bar{x} = 3.200$) or for firms with unskilled positions comprising 25%+ of their workforce ($\bar{x} = 3.061$) is greater than one. The ATT for those who received the 5-year appeal and work in Manufacturing ($\bar{x} = 3.385$), Trade ($\bar{x} = 3.467$), for firms with more than 500 employees ($\bar{x} = 3.185$), that are private ($\bar{x} = 3.472$), or firms who changed their hiring policy to be CFCA compliant is also greater than one ($\bar{x} = 3.598$). These sub-groups were especially persuaded by the appeal relative to their within-group counterparts assigned to the control group. However, it is noteworthy these means still place these groups in the *neither likely nor unlikely* category of re-extending an offer of employment.

We further explore heterogeneity in treatment effects using sub-group analysis and interacting the treatment received with the set of firm-level characteristics predetermined to be relevant to the outcome. Of the sub-group effects reported above and in Figure 3, only the 18-month/Trade, 5-Year/Non-Profit, and 5-Year/25%+ Unskilled Labor interactions are statistically significant. Hiring decision-makers in the Trade industry ($b = 1.701, p < .05$) who were assigned to the 18-month appeal treatment are more likely to be willing to re-extend an offer of employment, relative to those in Professional Services who were also assigned to the 18-month group holding all other covariates constant. Respondents employed by non-profit organizations ($b = -1.837, p < .05$) or firms where over 25 percent of positions are unskilled ($b = -0.856, p < .05$) who were assigned to the 5-year appeal treatment, were less likely to re-extend an offer of employment, relative to public organizations and firms with less than 25 percent unskilled roles

who were assigned the same treatment. Only a small number of sub-groups have a detectably significant relationship between firm-characteristic, treatment assignment, and willingness to re-extend an offer of employment. This finding coupled with the descriptive analysis of ATT above suggests homogeneity in the efficacy of appeals across employers, but the results should be interpreted cautiously as the sample size required to detect statistically significant variation across sub-groups is substantially larger than the sample required to detect an ATE of equivalent magnitude across the entire sample. A complete table of estimates for the heterogeneity of treatment effects is reported in Appendix C.

In summary, applicants who engage in impression management strategies via appeals after an employment offer is rescinded are more likely to have their offer reinstated. However, the magnitude of this effect is relatively small and varies across firm characteristics, rendering an applicant's impression management abilities to affect a successful hiring outcome marginal. Considering the median values, an applicant who offers an appeal 18-months post-conviction is neither likely/nor unlikely to be hired (median = 3), while the applicant who offers an appeal 5-years post-conviction is only somewhat likely to be hired (median = 4). When looking at the mean values, the picture is bleaker (18-month appeal $\bar{x}$ = 2.98; 5-year appeal $\bar{x}$ = 3.32).

The Relationship Between Appeal Efficacy and Previously Inclusive Hiring

To better understand the impact of this policy change, we compare the distribution of those who are swayed by an appeal against the distribution of those who reported they would have considered an applicant with a criminal history for the last entry-level or non-degreed position for which they hired.[12] The results are presented in Table 4. We find 68.7 percent (n = 90) of respondents who received the appeal and were open to considering an applicant with a criminal history for their last entry-level/non-degreed position were swayed by the appeal, compared to

39.1 percent (n = 87) who would not have considered an applicant with a record. The difference between these groups is statistically significant (*p < .001*).

While self-reported willingness to hire is a useful measure of an individual decision-maker's attitudes and likely behavior, we acknowledge actual behavior is a more robust measure so we also test the relationship of being swayed by an appeal and whether their employer has hired someone with a criminal record within the past four years. The results are presented in Table 5. We find 63.2 percent (n = 91) of respondents who received the appeal and work for an organization that has hired someone with a criminal record in the past four years were swayed by the appeal, compared with 42.9 percent (n = 54) who work for organizations that have not. The difference between these groups is also statistically significant (*p < .01*).[13]

[Table 4 About Here]

[Table 5 About Here]

While additional testing is required to thoroughly interrogate the nature of the relationship between being previously willing to consider applicants with criminal histories and being swayed by appeals, these results suggest the CFCA's appeals provision does not necessarily expand employment opportunities for individuals with criminal records given the continuity of hiring practices pre- and post-CFCA implementation.

Discussion & Policy Implications

In this article, we aim to contribute to the research on employer hiring practices of individuals with criminal records by examining the impact of a specific Fair Chance policy – the CFCA. The CFCA extends some of the most stringent legal protections to individuals with criminal pasts in

the nation and is intended to decrease discriminatory hiring practices by restricting when and how one's criminal history is considered by employers. Insofar as the intent of the law was to expand opportunities for individuals with records and reduce barriers to employment by empowering applicants to advocate on their behalf, the CFCA appears to be less effective than hoped, at least in the IE of California. Our study yields four findings that suggest improved strategies for policy as well as enforcement.

First, our replications reveal that employer concerns about hiring individuals with records persist and that firm-level characteristics—including company size, industry, and percent of workforce that is unskilled—continue to be predictors of background check policy, frequency, willingness to hire, and historical hiring practice of this population. Companies in non-public facing industries, labor-intensive industries, private and non-profit employers, and those with a high percentage of unskilled positions generally have more favorable background check policies and their hiring decision-makers express greater willingness to hire applicants with criminal histories. The types of firms that report increased willingness are generally more likely to have hired someone with a record post-CFCA, which helps to validate self-reported behavior within the survey.

A possible avenue to combat this persistent bias is to recommend employer educational trainings, including showcasing findings from empirical research and engaging in "mythbusting" about hiring individuals with records. For example, when hiring decision-makers express concerns about personal or company liability attached to negligent hiring suits involving repeat offending, they could be provided summaries of research that show reoffending tends to decline over time (Blumstein & Nakamura, 2009) or those that refer to existing case law (McElhattan, 2022). To that end, McElhattan (2022) contends "the negligent hiring case law situates criminal

record checks as a step that employers should use judiciously and as foreseeable risk dictates" (p. 133), yet the pervasive human resources discourse belies this and frames record checks as the default practice. Further, employers often point to the myth that individuals with records are more likely to engage in illegal activity at work but studies find employees are more likely to be the victim of workplace violence at the hands of customers, clients, partners, and strangers rather than coworkers (with or without records) (Duhart, 2001). Integrating research into such anti-discrimination training for hiring staff could help to debunk concerns about repetition risk and liability. While also addressing stigma and bias, employer trainings could create greater awareness of the CFCA so as to avoid blanket exclusions of those with records (Sugie, 2017). Recognizing that required diversity and bias trainings can sometimes provide backlash and recalcitrance among employees (Tinkler, 2008), specifically targeting employers with existing CFCA violation records may be a more productive strategy rather than attempt to implement them broadly across employers.

Second, we find hiring decision-makers employed by firms that changed their hiring policies to be CFCA compliant profess greater willingness to hire applicants with a criminal history for their last entry-level or non-degreed position than those employed by firms that did not change their policies. This suggests the CFCA may have reduced discrimination toward justice-involved individuals. However, it is unclear whether these respondents were sincerely more open to hiring those with records, if they worked for employers that were more inclusive of this population prior to the CFCA's enactment, or if they were aware of the socially desirable answer as signaled by their employer modifying their hiring policy. Given this ambiguity in the mechanism and other related findings discussed below, we are reluctant to consider this a success of the CFCA.

Third, nearly 80 percent of our sample reported violating the CFCA by seeking information about an applicant's background prior to a conditional offer of employment. This effect is pervasive across firm-types, including those that changed their hiring policy to be CFCA compliant, a finding which underscores the disconnect between *policy* and *practice*. Companies can change their hiring policy to be CFCA compliant on paper but that does not appear to affect individual hiring decision-makers' informal consideration of an applicant's background (e.g., via internet searches or questions during the interview), which occurs at least as often as formal background checks by companies and underscores the crucial role individual discretion plays in shaping hiring outcomes. When hiring decisions-makers' interest in applicants' records persists yet reliable information about an individual's criminal history is withheld until late in the hiring process, statistical discrimination may be more common. This effect is well-documented in studies of BTB legislation that find employers use available information—like race or gender—to proxy involvement with the justice system when they are prohibited from asking about criminal history on an application. Such policies, then, may cultivate new or exacerbate existing biases in the hiring process, including towards individuals who may not be justice-involved (Agan & Starr, 2018; Raphael, 2021).

The overwhelming number of decision-makers that violate the CFCA belies prior studies on BTB employer hiring policies that find most companies modify their practices to comply with changes in legislation (e.g., Schneider et al., 2022). However, this may be due to difficulties inherent in the enforceability of the CFCA relative to BTB laws. Whereas BTB typically regulates application queries, more easily scrutinized for compliance or lack thereof, the CFCA extends to unobservable activities that occur largely behind closed doors. As such, enforcement efforts primarily fall to aggrieved applicants whose offers are rescinded because of their criminal

history. Further, for enforcement to even occur through this mechanism, employers must be truthful when disclosing the reason for rescinding an offer, even though they can easily provide an alternative reason for revocation to the applicant that obfuscates actual motivations (e.g., the position is no longer necessary). This can make it especially challenging for aggrieved applicants to document and challenge violations, likely resulting in the CFCA being underenforced.

Alternatively, state agencies can also carry out this policy's enforcement. Although it is unclear how much effort has been expended on CFCA enforcement since its implementation, there is some evidence of recent amplified efforts by the California Department of Fair Employment and Housing (DFEH) to crack down on violators; still, this likely captures only a very small fraction of the companies not in compliance (Roberts, 2021). Without increased statewide enforcement efforts, noncompliance will continue to occur, sustaining the status quo (Dobbin and Sutton, 1998). Related to enforcement efforts, we find employers in industries that are less likely to have customer contact, more likely to hire for "dirty" jobs, or have more than 25 percent of their labor force in unskilled roles tend to have permissive background check policies and are more willing to seriously consider hiring those with records. With the exception of non-profit employers, who report greater CFCA compliance than private and public employers, violations do not systematically differ across industry, company size, and the percent of workforce that is unskilled. Therefore, law enforcers should broadly target employers through their education and enforcement efforts.

Fourth, our experiment reveals that applicant appeals after a conditional offer has been extended are marginally effective, only minimally increasing one's likelihood of being hired. Appeals prove more persuasive with greater length of time since conviction yet this likely stems from employers' perceptions of lowered risk rather than increased appeal efficacy (Visher et al.,

2011). Our findings further contribute to the research on impression management strategies used by applicants with records during job searches, which previously indicated these efforts at times produced beneficial hiring outcomes for individuals who implemented them (Lageson et al., 2015). An important distinction, however, is that past studies almost always focused on the front end of the hiring process (e.g., initial interviews), whereas our analysis of the CFCA examines impression management strategies at the tail end of it *after* an offer was extended. Based on our findings, post conditional-offer appeals do not make much difference in changing employers' hiring practices for those with records.

Insofar as appeals are (marginally) effective, we are interested in the heterogeneity of treatment effects across firm-level characteristics known to influence hiring practice and whether appeals persuade employers who were historically unwilling to consider or hire those with records. We find some variation in how firms with different characteristics receive appeals when comparing means. In particular, the Trade industry and firms with more than 25 percent of their positions held by unskilled labor were especially persuaded (ATT > 1) by the 18-month appeal. Firms in Trade, Manufacturing, with 500+ employees, that are private, or changed their policy to be CFCA compliant were similarly persuaded by the 5-year appeal. These differences in means suggest heterogeneity in treatment effects, but our sample size for each sub-group is generally too small to detect statistically significant differences. The relationship between sub-group (e.g., each firm-level characteristic), experimental assignment, and willingness to re-extend an offer of employment is significant only for firms in Trade (18 month appeal), non-profit (5 year appeal), and for employers with a high percentage of unskilled labor (5 year appeal). Taken together, these findings suggest certain employers may be especially susceptible to the persuasive effects of impression management strategies and that individuals with records may have greater success

35

appealing rescinded offers by certain types of firms. Still, it is worth reiterating that even among those employers that are more likely to be swayed by appeals, the effect remains marginal, with the mean likelihood of reextending an offer of employment after receiving an appeal resting at or below being *Neither Likely nor Unlikely* to hire. Finally, decision-makers who indicate a historic willingness to consider those with records and who work for employers who have hired someone with a record in the past four years are generally those persuaded by appeals. This finding suggests that the CFCA has done little to expand employment opportunities to new fields or types of firms, though the policy may have deepened willingness to hire among those employers who were historically willing to do so.

Limitations

Although survey experiments offer advantages relative to convenience samples or non-experimental designs, limitations remain. Unlike audit studies that are conducted in the field, surveys frequently do not capture actual behavior, which introduces the possibility of social desirability bias. To reduce this, we differentiate between personally held thoughts and actual behavior. Throughout the survey, we ask about the respondent's personal attitudes toward hiring people with criminal records, their attitudes toward hiring someone with a record for the last non-degreed or entry-level position, and their employer's actual hiring practices. This allows us to compare self-reported attitudes against self-reported behaviors. Moreover, to the extent social desirability bias is at play, we would expect our estimates of non-compliance to be downwardly biased. In other words, it is possible non-compliance is higher than our estimates suggest because the desirable answer would be following the letter of the law and waiting to consider an applicant's record until after a conditional offer of employment is made. Finally, online surveys suffer from low response rates. Here, 20% of those who met our inclusion criteria completed the

survey, which is consistent with other online surveys fielded in the social sciences. If those who did not open or complete the survey systematically differ from those who did, we would expect our results to be upwardly biased. That is, CFCA non-compliant respondents would be less likely to complete our survey and we thus may overstate compliance and willingness to hire individuals with records.

We do not have data assessing employers' attitudes and hiring practices toward applicants with records pre- and post-CFCA, which would be ideal to capture changes over time. Still, the premise of our study is to test the extent to which the passage of this policy has altered hiring practices so that employers comply with the CFCA, and in doing so, cultivates the intended outcome of improved hiring outcomes.

When we inquired about whether a company had a background check policy, we did not ask respondents to detail what those policies entailed. Further, because we were broadly interested in whether employers considered criminal records after the CFCA's adoption, we did not ask whether their employer hired for positions that were covered by occupational licensure requirements that mandate background checks as a precondition of employment. The NELP (2019) report suggests these positions comprise a small proportion of jobs; however, we were unable to capture the variation of such policies across employers, which could impact hiring outcomes and prospective applicants' decision to file an appeal for a position that requires a consideration of criminal history. While our comparison of private to public/educational/healthcare (where licensure requirements are highest) employers mitigates some of this concern, this is nevertheless a limitation of our study. Future work would do well to consider variation in background check policy at the employer and occupational levels.

The survey was active during an especially tight labor market when most industries in the IE were adding, but having difficulty filling, new jobs to the economy (CES, 2022). As a result, we would expect the labor shortage to make employers more open to hiring people with records, which would upwardly bias our 'willingness to hire' estimates. Although the market conditions were atypical, they allowed for a strong test of employers' inquiry into applicant backgrounds and willingness to hire those with criminal histories.

This study was designed to provide a general understanding of hiring attitudes and practices post-CFCA to ascertain what (or if) employer changes have transpired since its implementation. It does not interrogate more nuanced differences of employment opportunities across job-seekers that are tied to their racial, ethnic, gender, or sexual identity or other characteristics, like severity of offense. While our findings suggest an environment ripe for statistical discrimination, we do not systematically investigate this topic. We recognize barriers to post-conviction employment are not equal across all justice-involved individuals and that certain groups, and especially Black men, experience heightened disadvantage when reentering the workforce. Moreover, we elected to construct an appeal for an applicant with a history of conviction for a violent felony, as opposed to a drug conviction, which is more ambiguous with respect to offense severity and penalty. This was an intentional design to decrease the likelihood of respondents having varying interpretations of the treatment and we acknowledge this decision creates an area for future study to generalize our findings about CFCA efficacy for lesser crimes, which may be more effectively appealed. Further understanding of the role of statistical discrimination and applicant characteristics—especially as they affect the impact of Fair Chance Act policies—are important avenues for future research.

We also acknowledge that the appeal we tested contains basic factual information but does not provide a detailed redemption narrative. Given the likelihood that employers may find different approaches to such appeals more (or less) convincing, further studies in this area would be helpful to advance knowledge and practice.

Finally, our analysis solely focuses on one policy in California, yet there are a number of other state- and county-based policies that have potential to reduce employment barriers tied to criminal records, such as CORs, pardons, or expungements (e.g., Jacobs, 2015). Each can be arduous for individuals as they entail different qualification criteria, stipulations and bureaucratic processes (Colgate Love, 2011). The salience of such policies, and how they intersect with or influence the CFCA and its efficacy, should be an area for future scholarly investigation.

Conclusion

This study interrogates employer attitudes towards hiring those with records, their compliance with the CFCA, and the efficacy of the CFCA's appeals provision among hiring decision-makers in a major metropolitan region in California. Our analysis yields three primary findings. First, employers retain aversion toward hiring justice-impacted individuals and historical patterns persist, whereby companies with a high percentage of unskilled, labor-heavy, or non-customer service facing roles are more willing to employ this population. Second, nearly 80% of hiring decision-makers in our sample stated that either they or their employer consider an applicant's criminal history prior to a conditional offer of employment in violation of the CFCA. These violations are driven through formal and informal inquiries and are widespread across industry and firm size. Third, the CFCA's appeal provision provides applicants a formal channel to engage in impression management strategies. Yet, appeals only modestly increase the likelihood of being hired for an individual with a felony record that likely carries the penalty of

incarceration. Together, these findings do not paint a particularly optimistic picture of the CFCA's efficacy in reducing barriers to employment for this population in its first five years since passage. It is possible the CFCA will have longer-term impacts in shaping employer norms and reducing stigma towards this population by enhanced procedural justice.

References

Agan, A., & Starr, S. (2018). Ban the box, criminal records, and racial discrimination: A field experiment. The *Quarterly Journal of Economics, 133*(1), 191–235.

Alder, G.S., & Gilbert, J. (2006). Achieving ethics and fairness in hiring: Going beyond the law. *Journal of Business Ethics*, 68, 449–464.

Ali, A., Lyons, B., & Ryan, A. M. (2017). Managing a perilous stigma: Ex-offenders' use of reparative impression management tactics in hiring contexts. *Journal of Applied Psychology*, *102*(9), 1271–1285.

Apel, R. & Horney, J. (2017). How and why does work matter? Employment conditions, routine activities, and crime among adult male offenders. *Criminology*, 55(2), 307-343.

Atkin, C. A., & Armstrong, G. S. (2013). Does the concentration of parolees in a community impact employer attitudes toward the hiring of ex-offenders? *Criminal Justice Policy Review*, *24*(1), 71-93.

Augustine, D. (2019). Working around the law: Navigating legal barriers to employment during reentry. *Law & Social Inquiry, 44*(3), 726–751.

Blumstein, A., & Nakamura, K. (2009). Redemption in the presence of widespread criminal background checks. *Criminology*, *47*(2), 327–359.

Bushway, S. D., & Sweeten, G. (2007). Abolish lifetime bans for ex-felons. *Criminology & Public Policy*, *6*(4), 697–706.

Bushway, S. D., Stoll, M., & Weiman, D. (2007). *Barriers to reentry? The Labor market for released prisoners in post-industrial America*. New York: Russell Sage Foundation.

Colgate Love, M. (2011). Paying their debt to society: Forgiveness, redemption, and the uniform collateral consequences of conviction act. *Howard Law Journal*, *54*(3), 753–793.

Corda, A., & Lageson, S. (2020). Disordered punishment: Workaround technologies of criminal records disclosure and the rise of a new penal entrepreneurialism. British Journal of *Criminology*, *60*(2), 245-264.

Craigie, T. A. (2020). Ban the box, convictions, and public employment. *Economic Inquiry 58*(1): 425–445.

Current Employment Statistics (CES BLS). (2022). U.S. Bureau of Labor Statistics. Retrieved November 10, 2022 from

https://data.bls.gov/timeseries/SMU06401400000000001?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true

Demuijnck, G. (2009). Non-discrimination in human resources management as a moral obligation. *Journal of Business Ethics*, *88*, 83–101.

Dobbin, F., & Sutton, J. R. (1998). The strength of a weak state: The rights revolution and the rise of human resources management divisions." *American Journal of Sociology*, *104*(2), 441–476.

Doleac, J., & Hansen, B. (2020). The unintended consequences of "ban the box": Statistical discrimination and employment outcomes when criminal histories are hidden. *Journal of Labor Economics, 38*(2), 321-374.

Duhart, D. T. (2001). Violence in the workplace, 1993-1999 (Report No. NCJ 190076). United States Department of Justice. https://bjs.ojp.gov/content/pub/pdf/vw99.pdf

Edelman, L. B. (1992). Legal ambiguity and symbolic structures: Organizational mediation of

    civil rights law. *American Journal of Sociology, 97*(6), 1531–1576.

Gardner, D.M., Ali, A.A., & Ryan, A.M. (2023). Reparative impression management for ex-

    offender applicants: Understanding mechanisms, race/ethnicity, and disclosure timing.

    Journal of Business Psychology, 38, 561–587.

Goffman, E. (1959). *Presentation of self in everyday life*. New York: Doubleday.

Goodman, P. (2020). Work your story: Selective voluntary disclosure, stigma management, and

    narratives of seeking employment after prison. *Law & Social Inquiry*, *45*(4), 1113-1141.

Harris, P. M., & Keller, K. S. (2005). Ex-offenders need not apply: The criminal background

    check in hiring decisions. *Journal of Contemporary Criminal Justice*, *21*(1), 6–30.

Heydon, G., & Naylor, B. (2018). Criminal record checking and employment: The

    importance of policy and proximity. *Australian & New Zealand Journal of Criminology*,

    51(3), 372–394.

Holzer, H., Raphael, S., & Stoll, M. (2001). *Will employers hire ex-offenders? Employer*

    preferences, background checks, and their determinants. UC Berkeley: Berkeley

    Program on Housing and Urban Policy. Retrieved December 15, 2022.

    https://escholarship.org/uc/item/3c6468h2

Holzer, H., Raphael, S., & Stoll, M. (2007). The effect of an applicant's criminal history on

    employer hiring decisions and screening practices: Evidence from Los Angeles. In S.

    Bushway, M. A. Stoll, & D. F. Weiman (Eds.), *Barriers to reentry? The labor market for*

    released prisoners in post-industrial America (pp. 117-150). New York, NY: Russell

    Sage Foundation.

Ispa-Landa, S., & Loeffler, C. E. (2016). Indefinite punishment and the criminal record: Stigma

reports among expungement-seekers in Illinois. *Criminology*, *54*(3), 387–412.

Jacobs, J. B. (2015). *The Eternal Criminal Record.* Cambridge: Harvard University Press.

Jones, T. M. (1991). Ethical decision making by individuals in organizations: An issue-
contingent model. *The Academy of Management Review, 16*(2), 366–395.
https://doi.org/10.2307/258867

Kelly, E. (2010). Failure to update: An institutional perspective on noncompliance with the
family and medical leave act. *Law & Society Review*, *44*(1), 33–66.

Krylova, K. O., Longacre, T. E., & Phillips, J. S. (2018). Applicants with a tarnished past:
Stealing thunder and overcoming prior wrongdoing. *J Bus Ethics, 150*(3), 793–802.

Lageson, S., Vuolo, M., & Uggen, C. (2015). Legal ambiguity in managerial assessments of
criminal records. *Law & Social Inquiry*, *40*(1), 175-204.

Lageson, S., Webster, E., & Sandoval, J. (2021). Digitizing and disclosing personal data: The
proliferation of state criminal records on the Internet. *Law & Social Inquiry, 46*(3), 635-
665.

LaPlant, E. G., & Vuolo, M. (2021). The significance of race: Overcoming obstacles in the
adoption of ban the box laws. *Sociological Quarterly*, *62*(3), 570–93.

Lukies, J., Graffam, J., & Shinkfield, A. J. (2011). The effect of organisational context variables
on employer attitudes toward employability of ex-offenders. *International Journal of
Offender Therapy and Comparative Criminology*, *55*(3), 460-475.

McCann, W., Kowalski, M. A., Hemmens, C., & Stohr, M. K. (2021) An analysis of certificates
of rehabilitation in the United States. *Corrections*, *6*(1), 18-44.

McElhattan, D. (2022). The exception as the rule: Negligent hiring liability, structured

uncertainty, and the rise of criminal background checks in the United States. *Law &*
Social Inquiry, *47*(1), 132-161.

Nally, J. M., Lockwood, S. R., & Ho, T. (2011). Employment of ex-offenders during the
recession. *Journal of Correctional Education*, *62*, 117-131.

National Employment Law Project (NELP). (2021). *Ban the box: U.S. cities, counties, and states*
adopt fair-chance policies to advance employment opportunities for people with past
convictions. Retrieved October 14, 2022, from http://s27147.pcdn.co/wp-
content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-Oct-2021.pdf

National Employment Law Project (NELP). (2019). *The California Fair Chance Act - Fact*
Sheet. Retrieved August 28, 2023 from www.nelp.org/wp-content/uploads/Fact-Sheet-
California-Fair-Chance-Worker-Know-Your-Rights.pdf.

Oluwasegun, O., & Ritter-Williams, D. (2019). A phenomenological study of employer
perspectives on hiring ex- offenders. *Cogent Social Sciences, 5*(1), 1-13.

Pager, D. (2003). The mark of a criminal record. *American Journal of Sociology, 108*(5),
937–975.

Pager, D. (2007). Two strikes and you're out: The intensification of racial and criminal stigma.
In D. Weiman, S. Bushway, and M. Stoll (Eds.), *Barriers to reentry? The labor market*
for released prisoners in post-industrial America (pp. 151-173). New York: Russell Sage
Foundation.

Pager, D., Western, B., & Sugie, N. (2009). Sequencing disadvantage: Barriers to employment
facing young black and white men with criminal records. *The ANNALS of the American*
Academy of Political and Social Science, 623, 195–213.

Radice, J. (2012). Administering justice: Removing statutory barriers to reentry. *University of*

Colorado Law Review, 83, 715–1181.

Raphael, S. (2021). The intended and unintended consequences of Ban the Box. *Annual Review of Criminology, 4*, 191–207.

Reich, S. E. (2017). An exception to the rule: Belief in redeemability, desistance signals, and the employer's decision to hire a job applicant with a criminal record. *Journal of Offender Rehabilitation, 56*(2), 110-136.

Roberts, J. (2021). *Employers take note: Increased enforcement of California's Fair Chance Act*. California Chamber of Commerce. Retrieved December 1, 2022, https://hrwatchdog.calchamber.com/2021/10/employers-take-note-increased-enforcement-of-californias-fair-chance-act/

Sampson, R. J., & Laub, J. H. (1993). *Shared beginnings, divergent lives: Delinquent boys to age 70*. Cambridge, MA: Harvard University Press.

Schneider, L., Vuolo, M., Lageson, S., & Uggen, C. (2022). Before and after Ban the Box: Who complies with anti-discrimination law? *Law & Social Inquiry, 47*(3), 749-782.

Smith, S. S., & Broege, N. (2020). Searching for work with a criminal record. *Social Problems, 67*(2), 208–232.

Sugie, N. F. (2017). Criminal record questions, statistical discrimination, and equity in a "Ban the Box" era. *Criminology & Public Policy, 16*(1), 167-175.

Sugie, N. F. (2018). Work as foraging: A smartphone study of job search and employment after prison. *American Journal of Sociology, 123*(5), 1453–1491.

Sugie, N. F., Zatz, N. D., & Augustine, D. (2020). Employer aversion to criminal records: An experimental study of mechanisms. *Criminology, 58,* 5-34.

Tinkler, J. (2012). Resisting the enforcement of sexual harassment law. *Law & Social Inquiry,*

37(1), 1-24.

Uggen, C., Manza, J., & Thompson, M. (2006). Citizenship, democracy, and the civic

    reintegration of criminal offenders. *The ANNALS of the American Academy of Political*

    and Social Science, 605, 281-310.

Uggen, C., Vuolo, M., Lageson, S., Ruhland, E., & Whitman, H. (2014). The edge of stigma: An

    experimental audit of the effects of low-level criminal records on employment.

    Criminology, 52, 627–654.

U.S. Equal Employment Opportunity Commission. (2012). 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#sdendnote118sym

Visher, C. A., Debus-Sherrill, S. A., & Yahner, J. (2011). Employment after prison: A

    longitudinal study of former prisoners. *Justice Quarterly*, *28*, 698-718.

Visher, C. A., Winterfield, L., & Coggeshall, M.B. (2005). Ex-offender employment programs

    and recidivism: A meta-analysis. *Journal of Experimental Criminology, 1*, 295-315.

Von Bergen, C. W., & Bressler, M. S. (2016). "'Ban the Box" gives ex-offenders a fresh start in

    securing employment. *Labor Law Journal*, *67*, 383-395.

Vuolo, M., Lageson, S., & Uggen, C. (2017). Criminal record questions in the era of "Ban the

    Box." *Criminology & Public Policy, 16*(1), 139-165.

Western, B. (2018). *Homeward: Life in the Year After Prison*. New York, NY: Russell Sage

    Foundation.

Western, B., & Sirois, C. (2019). Racialized re-entry: Labor market inequality after

    incarceration. *Social Forces, 97*(4), 1517-1542.

Williams, K. A. (2007). Employing ex-offenders: Shifting the evaluation of workplace risks and

opportunities from employers to corrections. *UCLA Law Review, 55*(2), 521–558.

Winnick, T. A., & Bodkin, M. (2008). Anticipated stigma and stigma management among those

to be labeled "ex-con." *Deviant Behavior*, *29*, 295–333.

Table 1. Characteristics of the Sample

Respondent Characteristic	Percentage	Firm Characteristic	Percentage
Gender		**Industry**	
Male	49.24%	Labor	12.21%
Female	50.76%	Manufacturing	7.06%
		Trade	8.78%
Age Group		Professional Services	29.77%
< 25	10.50%	Education, Health, and Public Services	31.11%
25 − 34	23.66%		
35 − 44	34.35%	Service	11.07%
45 − 54	17.56%		
>= 55	13.93%	**Company Size**	
		5 − 99	35.31%
Education Level		100 − 499	29.77%
Less than High School	0.38%	500 +	34.92%
High School or GED Equivalent	8.59%		
Some College	15.08%	**Employer Type**	
Associate's Degree	10.50%	Public / Government	30.53%
Bachelor's Degree	34.35%	Private Company	63.55%
Master's or Professional Degree	27.10%	Non-Profit	5.92%
Doctorate	4.01%		
		% of Unskilled Labor	
Race / Ethnicity		Less than 25%	55.34%
Asian	5.73%	More than 25%	44.66%
Black or African American	8.97%		
Native American or Alaska Native	1.53%	**Has a Formal Background Check Policy**	83.02%
Native Hawaiian or Pacific Islander	0.76%		
White (Hispanic)	36.26%		
White (non-Hispanic)	40.65%	**Post-CFCA Policy Change**	50.95%
Multi-racial	6.11%		
Position Level			
Entry-level	7.25%		
Intermediate-level	18.13%		
Mid-level (manager)	35.11%		
Senior- or executive-level	29.96%		
Proprietor/Owner	9.54%		

Notes. N = 524.

Table 2. Willingness to Consider an Applicant with Record for Last Entry-Level/Non-Degreed Position & Reported CA Fair Chance Act Violations by Firm-Level Characteristics

Institutional Factor	Model 1 (OLR)	Model 2 (LR)
	Consider Applicant with Criminal History	**Reported CFCA Violations**
	Coef. (Std. Err.)	Coef. (Std. Err.)
Post-CFCA Policy Change	0.435 (0.161) **	0.113 (0.230)
Company Size		
100 – 499	-0.132 (0.201)	0.166 (0.298)
500 +	0.022 (0.195)	0.001 (0.280)
Industry		
Labor	-0.155 (0.264)	-0.842 (0.402) *
Manufacturing	-0.098 (0.318)	-0.491 (0.518)
Trade	-0.306 (0.300)	-0.741 (0.446) .
Education, Health, and Public Services	-0.688 (0.228) **	-0.878 (0.341) *
Service	-0.567 (0.277) *	-1.047 (0.402) **
Type of Employer		
Private Company	0.495 (0.198) *	0.109 (0.277)
Non-Profit	0.992 (0.366) **	-0.924 (0.430) *
% of Unskilled Labor (>25%)	0.489 (0.160) **	-0.338 (0.228)
Log-Likelihood	-802.3832	-250.5092
N	524	524

Notes. '5 – 99' is the reference group for Company Size; 'Professional Services' is the reference group for Industry; 'Public / Government' is the reference group for Type of Employer.

Statistical significance levels: $p < 0.1$., $p < 0.05$ *, $p < 0.01$ **, $p < 0.001$ *** (two-tailed tests)

Table 3. Effect of Appeals on Willingness to Hire

Summary of the Magnitude of Effect	Control	18 Month Assault	5 Year Assault
Mean	2.48	2.98	3.32
Median	2	3	4

p–value of the Mann–Whitney U test	Control	18 Month Assault	5 Year Assault
Control	–	< 0.001 ***	< 0.001 ***
18 Month Assault	–	–	0.01302 *
5 Year Assault	–	–	–

Notes. p–value of the Kruskal–Wallis H test (one-way ANOVA on ranks): < 0.001 *** suggests the overall difference in willingness to hire among three groups.

Statistical significance levels: $p < 0.1$., $p < 0.05$ *, $p < 0.01$ **, $p < 0.001$ *** (two-tailed tests)

Table 4. Relationship Between Being Swayed by an Appeal and Willingness to Consider an Applicant with a Criminal Record for the Last Entry-Level / Non-Degreed Position

| | | **Applicant with Criminal Record** | |
		Would not Consider	Would Consider
Swayed by Appeal	No	136 *(61.0%)*	41 *(31.3%)*
	Yes	87 *(39.01%)*	90 *(68.7%)*

p-value < 0.001 ***

Notes. Large-sample Chi-squared approximation is used with Yates' continuity correction. Statistical significance levels: $p < 0.1$., $p < 0.05$ *, $p < 0.01$ **, $p < 0.001$ *** (two-tailed tests)

Table 5. Relationship Between Being Swayed by an Appeal and Having Hired
an Applicant with a Criminal Record in Past 4 Years

		Hired Applicant with Record	
p–value = 0.0013 **		No	Yes
Swayed by Appeal	No	72 *(57.1%)*	53 *(36.8%)*
	Yes	54 *(42.9%)*	91 *(63.2%)*

Notes. Large-sample Chi-squared approximation is used with Yates' continuity correction.
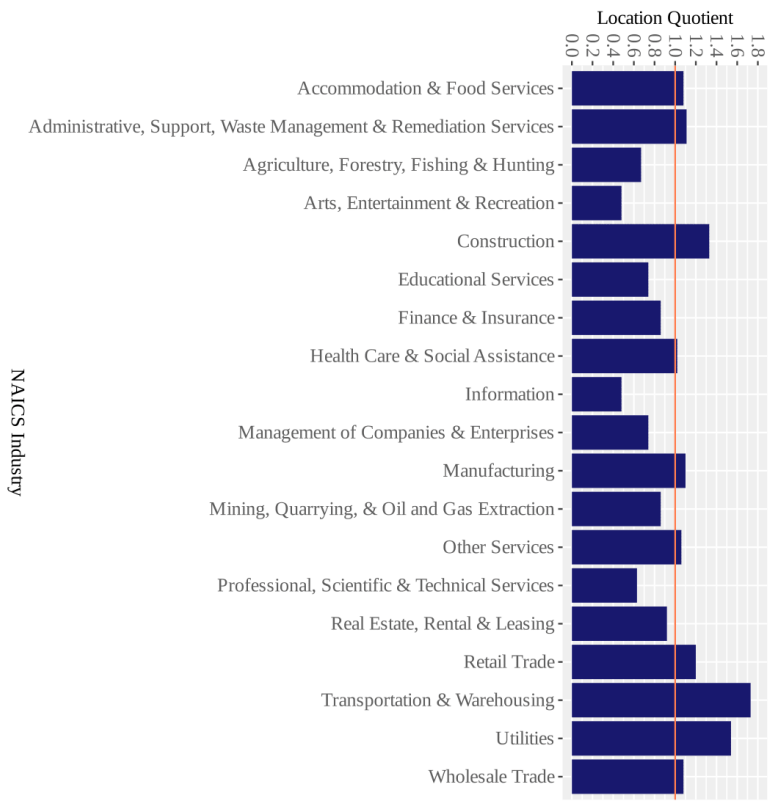Statistical significance levels: $p < 0.1$., $p < 0.05$ *, $p < 0.01$ **, $p < 0.001$ *** (two-tailed tests)

Figure 1. Inland Empire Industry Concentration, Relative to California and the United States
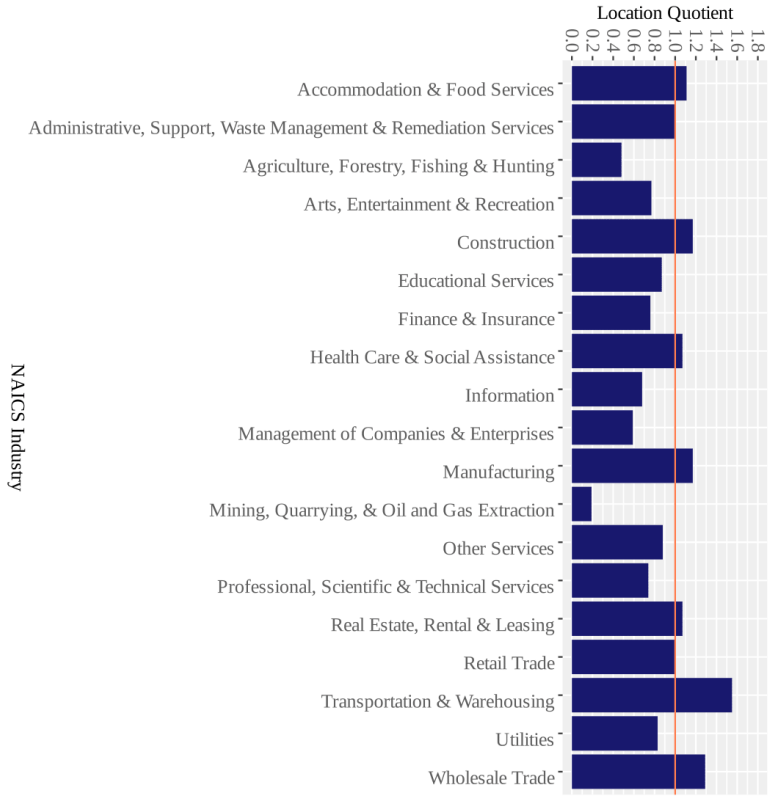
Figure 2. Timing of Background Inquiry

- 4.2%
- 15.8%
- 34.9%
- 45.0%

Legend:
- Before Interview
- After Interview, Before Offer
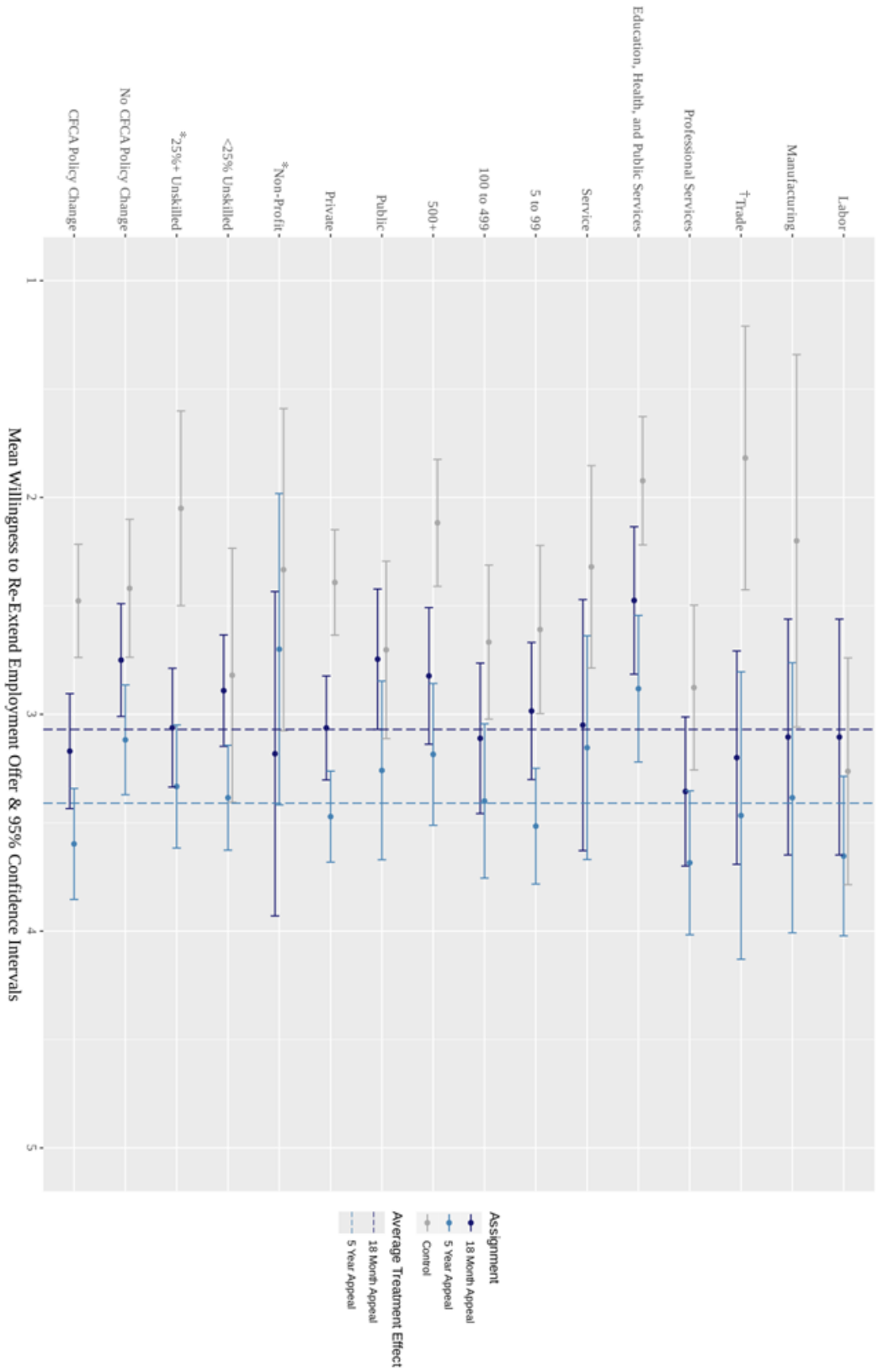- After Offer
- Never
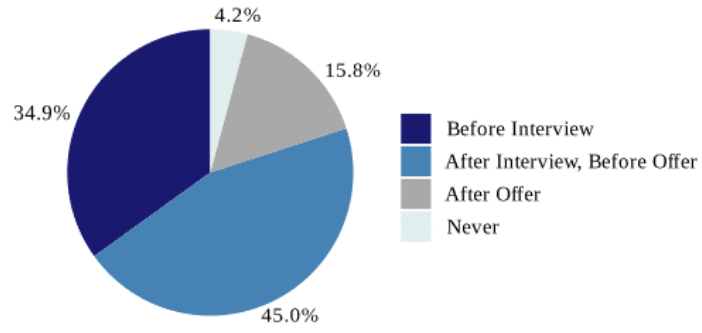
Figure 3. Average Treatment Effect by Firm-Level Characteristic

Notes. * denotes 5 year appeal interacted with firm characteristic is a significant predictor of willingness to re-extend employment offer ($p < .05$). † denotes 18 month and 5 year appeal interacted with firm characteristic are significant predictors of willingness to re-extend employment offer ($p < .05$).

Appendix A. Experimental Treatment Materials

Appeal for 18 Months Post-Conviction Group

Dear Hiring Manager,

My background check showed I was convicted of felony aggravated assault 18 months ago.

I have completed my sentence. Additionally, I have completed an anger management program, have no contact with the people I was previously associated with, and am a volunteer in the community where I help clean up hiking trails. I have not engaged in any illegal activity since.

This is in my past and I believe I would be a responsible employee if you were to give me the opportunity to work for you.

Sincerely,
Jonathan

Appeal for 18 Months Post-Conviction Group

Dear Hiring Manager,

My background check showed I was convicted of felony aggravated assault 5 years ago.

I have completed my sentence. Additionally, I have completed an anger management program, have no contact with the people I was previously associated with, and am a volunteer in the community where I help clean up hiking trails. I have not engaged in any illegal activity since.

This is in my past and I believe I would be a responsible employee if you were to give me the opportunity to work for you.

Sincerely,
Jonathan

Appendix B. Regression Models of Background Check Policy & Frequency and Hiring Attitudes & Practice

Institutional Factor	*Model 1 (LR)* Formal Background Check Policy Coef. (Std. Err.)	*Model 2 (OLR)* Frequency of Background Checks Coef. (Std. Err.)	*Model 3 (OLR)* Consider Applicant with Criminal History Coef. (Std. Err.)	*Model 4 (LR)* Hired Person with Criminal Record in Past 4 Years Coef. (Std. Err.)
Company Size				
100 – 499	1.610 (0.344) ***	0.759 (0.228) ***	-0.035 (0.198)	0.456 (0.257) .
500 +	1.246 (0.307) ***	0.966 (0.228) ***	0.064 (0.194)	0.663 (0.268) *
Industry				
Labor	-0.702 (0.386) .	0.079 (0.300)	-0.143 (0.265)	0.623 (0.332) .
Manufacturing	-1.272 (0.442) **	-0.884 (0.353) *	-0.102 (0.319)	0.296 (0.440)
Trade	0.055 (0.491)	0.536 (0.371)	-0.299 (0.298)	0.584 (0.403)
Education, Health, and Public Services	-0.100 (0.375)	0.447 (0.256) .	-0.739 (0.228) **	0.096 (0.285)
Service	-0.276 (0.426)	0.038 (0.317)	-0.510 (0.275)	0.056 (0.392)
Type of Employer				
Private Company	-0.203 (0.330)	0.092 (0.226)	0.480 (0.198) *	0.480 (0.266) .
Non-Profit	0.380 (0.623)	0.165 (0.443)	0.919 (0.363) *	1.047 (0.512) *
% of Unskilled Labor (>25%)	0.115 (0.252)	-0.075 (0.185)	0.474 (0.160) **	0.541 (0.212) *
Log-Likelihood	-213.1484	-485.9689	-806.0465	-262.444
N	524	524	524	396

Notes. '5 – 99' is the reference group for Company Size; 'Professional Services' is the reference group for Industry; 'Public / Government' is the reference group for Type of Employer.

Statistical significance levels: $p < 0.1$., $p < 0.05$ *, $p < 0.01$ **, $p < 0.001$ *** (two-tailed tests)

Appendix C. Heterogeneity in Treatment Effects on Willingness to Hire by Firm-Level Characteristics

Covariates	Willingness to Hire	
	18 Months Appeal × Institutional Factor	5 Years Appeal × Institutional Factor
	Coef. (Std. Err.)	Coef. (Std. Err.)
Company Size		
100 – 499	-0.265 (0.521)	-0.466 (0.526)
500 +	-0.583 (0.514)	-0.948 (0.507)
Industry		
Labor	-0.562 (0.696)	-0.511 (0.656)
Manufacturing	0.542 (0.982)	0.385 (1.013)
Trade	1.701 (0.814) *	1.650 (0.864)
Education, Health, and Public Services	0.013 (0.566)	-0.169 (0.583)
Service	0.400 (0.704)	-0.048 (0.729)
Type of Employer		
Private Company	-0.484 (0.509)	-1.003 (0.539)
Non-Profit	-0.479 (0.884)	-1.837 (0.906) *
% of Unskilled Labor (>25%)	-0.484 (0.417)	-0.856 (0.423) *
Post-CFCA Policy Change	-0.142 (0.418)	-0.002 (0.423)
Log-Likelihood	-751.0712	
N	523	

Notes. 'Control (no appeal)' is the reference group for Appeal; '5 – 99' is the reference group for Company Size; 'Professional Services' is the reference group for Industry; 'Public / Government' is the reference group for Type of Employer.

Statistical significance levels: $p < 0.1$., $p < 0.05$ *, $p < 0.01$ **, $p < 0.001$ *** (two-tailed tests)

Appendix D. Comparisons for Experiment II: Appeal
(non-parametric statistical hypothesis testing based on ranks of data values)

Summary of the Magnitude of Effect	Control	18 Month Assault	5 Year Assault
Mean	2.63	3.07	3.41
Median	3.00	3.00	4.00

P-value of the Mann–Whitney U test	Control	18 Month Assault	5 Year Assault
Control	–	0.0095 **	< 0.001 ***
18 Month Assault	–	–	0.0503 .
5 Year Assault	–	–	–

p-value of the Kruskal–Wallis H test (one-way ANOVA on ranks): < 0.001 ***

Note: All observations (individuals) whose employer type is 'Public / Government' are excluded.
Statistical significance levels: $p < 0.1$., $p < 0.05$ *, $p < 0.01$ **, $p < 0.001$ *** (two-tailed tests)

Endnotes

[1] Desistance signals are "observable aspects that signal information that is latent, or otherwise unobservable" (Reich, 2017: 116). They can include hard (e.g., technical competencies) and soft skills (e.g., personality or motivation) related to employment.

[2] There is a small but growing body of research that investigates how challenges and disadvantages in finding work can result in applicants with criminal histories "detaching" from the job seeking process altogether or ending searches shortly after release, which can potentially help explain poor employment outcomes (see Smith & Broege 2020; Sugie, 2018). Both can affect one's use of impression management strategies, including appeals.

[3] Of course, the appeals process itself may be undermined in numerous ways, such as if there are inaccuracies with the formal background check (which then requires the applicant to rectify misinformation) or employer violations of the formal specified procedures established by the CFCA.

[4] BTB policies may also include some regulation of the timing of background checks, often prohibiting them until after an interview, but this varies widely by jurisdiction.

[5] Location quotients compare the distribution of employers in a given industry and location (here, the IE) to a reference location (here, California and the US). Each quotient is derived by dividing the number of employers in a given industry in the IE by the number of employers in the same industry in California, and the US. A quotient greater than 1 indicates the industry provides a share of employment in the region than in the state or nation. A quotient of less than 1 indicates a smaller share.

[6] The latter number excludes the 24 individuals that were Dynata panel members and thus removed from our D&B survey list to ensure no individual was contacted twice.

[7] To ensure there are not systematic differences between the public and private sectors, we run a series of logistic regressions to predict our key outcomes of interest as a function of whether the respondent works for a public or private organization. For all but one measure (willingness to consider an applicant with a criminal record for last position), we find there is no detectable difference between sectors. Tellingly, private sector employers were no more or less likely to hire someone with a record in the past 4 years. We also estimate an interaction term between sector and whether the respondent reported their employer changed their hiring policy post-CFCA that is used to predict the same outcomes of interest. We find there is no difference in the effect of these policy changes, which is what we would expect if CFCA applied similarly to public/healthcare/education and private firms.

[8] We also asked respondents about how their employer conducts background checks (e.g., through a government database, private, third-party, etc.), but 26.5% of our sample indicated they did not know. This was especially pronounced among respondents at firms with 100 or more employees (29.5%), relative to firms with 99 or fewer employees (3.1%). We believe this is a feature of local hiring decision-makers' awareness that their employer has a background check policy, but their separation from the running of actual background checks. Therefore, we elect to rely on the dichotomous measure presented as it is more reliable.

[9] Both practices are legal with respect to the CFCA, provided they are completed *after* a conditional offer of employment is extended.

[10] This may also be because hiring decision-makers are not always aware of when their employer completes background checks (if handled by a centralized department).

[11] We also replicate this analysis and exclude respondents in *Education, Health, and Public Services.* The results, presented in Appendix D, are also statistically significant and comparable to those of the total sample (ATE of 18 month group of 0.44, ATE of the 5 year group of 0.78), which affirms employers in these industries respond similarly to appeals.

[12] Respondents who received an appeal are considered swayed by it if they indicate they are somewhat or very likely to re-extend an offer of employment. All other answers are coded as unswayed.

[13] The analyses reported in Tables 4 and 5 exclude respondents who were part of the control group and did not receive the appeal. The analyses reported in Table 5 also excludes respondents who work in education and healthcare as these fields are more likely to have outright legal prohibitions against hiring people with criminal histories and are thus less likely to be able to re-extend an employment offer to an applicant with a record.