

Summary of Dave Osiecki Blog Articles

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TCA's Recruitment and Retention Human Resources Committee

*This document was not intended or written to be used, and it cannot be used, as legal advice.
It is for educational purposes only.*

<https://blog.driverreach.com/driverreaches-mobile-dot-application-where-did-the-criminal-history-question-go>

<https://blog.driverreach.com/insights-compliance-the-criminal-history-question-and-a-conditional-job-offer-part-2-of-2>

<https://blog.driverreach.com/can-criminal-history-questions-be-asked-in-a-ban-the-box-world>

Asking about criminal convictions before a conditional offer of employment is banned in 30 states—20 states banned it for government employers (and in some cases government contractors) only and 10 states ban it for private employers like trucking companies. The entire list of 30 states is below with the underlined states being those that ban it for private employers. This was included in the word version of the blog but not on the website. I have attached it for your reference.

AZ, CA, CO, CT, DE, GA, HI, IL, IN, KY, LA, MD, MA, MN, MO, NE, NV, NJ, NM, NY, OH, OK, OR, PA, RI, TN
UT, VT, VA and WI

Based on the article there could be:

- Violations of the screening allowed to be performed before a conditional offer
- Violations of the conditional offer process

Considerations for what can be done before or after the conditional offer

Must be done after a conditional offer of employment:

- A DOT-required medical exam, conducted by a certified examiner, which the Americans with Disabilities Act requires be done after a conditional offer, and
- Passing a criminal history check, with any history evaluated on an individualized basis, consistent with job requirements and company standards. Under State 'Ban the Box' laws in at least 10 States, this must be done after a conditional offer.

Can be considered before a conditional offer of employment:

- The following are some factors that, in many cases, can reasonably be considered by a motor carrier before a conditional offer is extended:
 1. Meets the 21 yr-old minimum age requirement
 2. Reads and speaks the English language (sufficient to meet federal standard)
 3. Proper license (and endorsements, if applicable)
 4. Proper training or experience to safely operate the type of vehicle
 5. Safe driving experience consistent with company standards
 6. Satisfactory accident history consistent with company standards
 7. No gaps, or sufficiently explained gaps, in work experience
 8. MVR check, including not being under a State-issued disqualification

Other factors that can be considered before a conditional offer of employment:

- Completing other company-driven tests (e.g., a physical agility test)
- Background checks (e.g., credit history)

Can be completed before or after a conditional offer of employment:

- A company administered DOT-required road test
- The DOT-required pre-employment drug test
- The DOT-required safety performance history checks

Should be completed after a conditional offer of employment:

- Disqualifying offenses from the CDL regulations in 49 CFR Section 383.51 listed in four separate categories (three of the categories should be considered after the conditional offer):
 2. serious traffic offenses (10);
 3. railroad-highway grade crossing offenses (6); and,
 4. violating out-of-service orders (2).

Criminal History Questions

Driver disqualifying offenses that can be sought prior before the conditional offer of employment:

- Nine major disqualifying offenses from the CDL regulations in 49 CFR Section 383.51 listed in the first of four separate categories:
 - As a result of the criminal offense certainty for the nine “major offenses” in category 1, conviction information can be sought from a driver-applicant early on in the hiring process (i.e., before extending a condition offer of employment). These nine “major offenses”, extracted verbatim from Table 1 in Section 383,51, are as follows:

If a driver operates a motor vehicle and is convicted of:

1. Being under the influence of alcohol as prescribed by State law.
2. Being under the influence of a controlled substance.
3. Having an alcohol concentration of 0.04 or greater while operating a CMV.
4. Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in §383.72 of this part.
5. Leaving the scene of an accident.
6. Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table.
7. Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CLP or CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.
8. Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.
9. Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.”

Driver disqualifying offenses that should be considered after the conditional offer of employment:

- Disqualifying offenses from the CDL regulations in 49 CFR Section 383.51 listed in four separate categories (three of the categories should be considered after the conditional offer):
 2. serious traffic offenses (10);
 3. railroad-highway grade crossing offenses (6); and,
 4. violating out-of-service orders (2).

Follow up questions we need for clarification

- Related to the DOT-required road test that has to be administered by the carrier, does the statement “The geographic location of the carrier and the driver-applicant often dictates when it is done” mean there is state law that requires when this can be done based on the where the carrier or the driver is domiciled, or does it just mean it is based on convenience if the carrier and driver are physically far apart.