



Oregon

Licensing & Other Barriers to Growing Occupations That Unfairly Exclude People with Records

Nearly one in three Oregon adults, disproportionately people of color, has an arrest or conviction record that may prevent them from working in a variety of occupations regulated by the state.¹ Oregon requires a license or certification for **some of the largest and fastest-growing professions**, such as those in healthcare and education. Oregon’s licensing laws typically require background checks and grant boards and agencies **broad discretion to reject applicants based on conviction history**—often resulting in unfair denials that undermine economic health, government efficiency, community wellbeing, and racial equity.

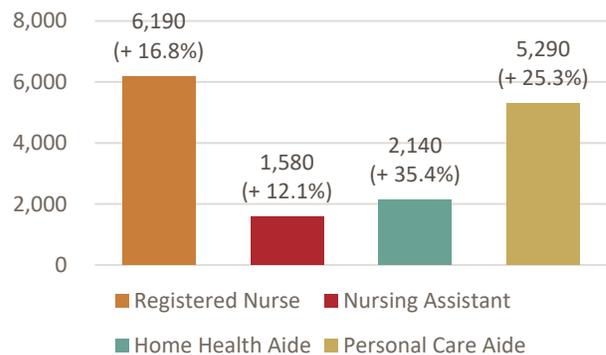
Four major industries—healthcare, K-12 education, childcare, and private security—stand out as including large, growing occupations, for which Oregon law requires a criminal background check. The occupations discussed below are, collectively, growing at a higher-than-average rate of over 15% per decade and account for over 6% of annual job openings in Oregon.²

Barriers to Rapidly Growing Healthcare Professions

The healthcare field includes some of the fastest-growing occupations in Oregon, measured by both the number of jobs and growth rate.

While employers cite difficulties in filling their many healthcare job openings, Oregon background check restrictions often block qualified workers with records from filling those vacancies. The standards used to evaluate a person’s record remain inadequately tailored to the goals of advancing community safety, economic growth, government efficiency, and racial equity.

Rapid Growth in OR Healthcare Occupations 2016–2026



Source: U.S. Dep’t of Labor, Bureau of Labor Stats., *Employment Projections—2016-2026*, <https://data.bls.gov/projections/occupationProj>.

Legend:			
Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy
Registered Nurse ³ & Nursing Assistant ⁴ (Bd. of Nursing)	<ul style="list-style-type: none"> Discretionary disqualification for any misdemeanor or felony. 	<ul style="list-style-type: none"> No express prohibition against considering set-aside convictions or arrests not resulting in conviction. Applicant need not report expunged juvenile convictions.⁵ 	<ul style="list-style-type: none"> Offense must be “substantially related”⁶ and “bear demonstrable relationship”⁷ to nursing. No express requirement to consider time since offense.

<p>Home Health Aide & Personal Care Aide⁸ (Dep't of Human Services)</p>	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for numerous felonies and certain misdemeanors.⁹ ✘ Mandatory, 5- or 10-year disqualification for certain other convictions, such as drug distribution. ⚠ Discretionary disqualification for any other conviction. 	<ul style="list-style-type: none"> ✔ For discretionary offenses, may not consider arrest, pending indictment, deferred sentence, conditional discharge, or participation in diversion program.¹⁰ ✘ May consider the above non-conviction information in certain circumstances. ✔ Applicant need not report expunged juvenile convictions.¹¹ 	<ul style="list-style-type: none"> ✔ For discretionary offenses, may not consider a conviction more than 10 years old.¹² ✔ For discretionary offenses, must consider time since offense, nature of offense, and relatedness of offense to occupation.¹³
---	--	--	---

Barriers to Careers in K-12 Education, Childcare, and Private Security

Roughly 64,000 Oregonians are employed in K-12 education or private security jobs that require a license or certification or as childcare workers or teaching assistants (see sidebar). Over 7,000 job openings in those fields emerge each year, and that number continues to increase. Despite the growing need for qualified applicants, Oregon law unnecessarily prevents many people with records from obtaining the license, certification, or other clearance that would enable them to fill those vacancies in education, childcare, and private security.

Teaching Assistants (TAs): Standards Applicable to School Employees

Oregon does not license or certify TAs, but the law requires fingerprinting of most school employees. The Department of Education then makes a fitness determination after considering various relevancy factors, including the nature of and time since the offense.¹⁴

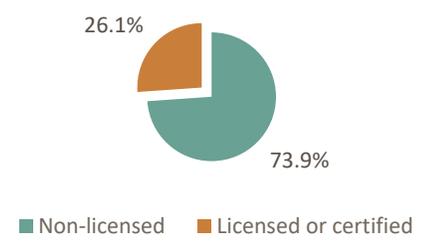
Occupation	Basis for Disqualification	Non-Conviction Information	Relevancy
<p>K-12 Teacher¹⁵ (Dep't of Education, Teacher Standards & Practices Comm.)</p>	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for numerous felonies and certain misdemeanors.¹⁶ ⚠ Discretionary disqualification for any other conviction. 	<ul style="list-style-type: none"> ✘ No express prohibition against considering set-aside convictions or arrests not resulting in conviction.¹⁷ ✘ "Conduct" that does not result in conviction but is viewed as "substantially related" to fitness for profession may be considered.¹⁸ 	<ul style="list-style-type: none"> ✔ For discretionary offenses, must consider time since offense, nature of offense, and relatedness of offense to occupation.²⁰
<p>Childcare Worker²¹ (Dep't of Education, Early Learning Div.)</p>	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for numerous felonies and misdemeanors. ✘ 5-year disqualification for drug offenses. ⚠ Discretionary disqualification for any other conviction. 	<ul style="list-style-type: none"> ✔ Applicant need not report expunged juvenile convictions.¹⁹ 	
<p>Private Security Guard²² (Dep't of Public Safety Standards & Training)</p>	<ul style="list-style-type: none"> ✘ Mandatory, permanent disqualification for numerous felonies. ✘ 10-year disqualification for all other felonies and numerous misdemeanors, including drug offenses. 	<ul style="list-style-type: none"> ✔ No express prohibition against considering arrests not resulting in conviction. ✘ "Conduct" that does not result in conviction but is "substantially related" to fitness for profession may be considered.²³ 	<ul style="list-style-type: none"> ✔ For discretionary offenses, must be "substantially related" to security work.²⁵ ✘ No express requirement to consider time since offense.

	<p>⚠ Discretionary disqualification for any other conviction.</p>	<p>✔ Applicant need not report expunged juvenile convictions.²⁴</p>	
--	---	--	--

Certificates of Good Standing

An Oregonian with a “nonperson” felony or Class A misdemeanor record may petition the court for a “certificate of good standing.” These certificates, however, provide **no benefit to applicants for occupational licenses or certifications**. Instead, a certificate merely creates a rebuttable defense for an employer in a negligent hiring lawsuit.²⁶

Percent of Total Oregon Workforce Licensed



Source: The White House, Occupational Licensing: A Framework for Policymakers tbl.1 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_fina_nonembargo.pdf.

Recommended Fair Chance Licensing Reforms for Oregon

Impose common-sense limitations on the unchecked discretion of boards and agencies to deny a license or certification based on virtually any criminal record.

- 1** *Limit the scope of the record inquiry because unlimited and unguided discretion leads to inconsistent and discriminatory decisions, often based on race and national origin.*

 - Arrests alone are not proof of misconduct: Prohibit consideration of arrests that do not result in conviction or result in minor convictions (e.g., all or most misdemeanors).
 - Forever is too long: Set a look-back limit to prevent denials based on old, irrelevant convictions, and make clear that “set-aside” convictions may not be considered.

- 2** *Require all boards and agencies to justify denials after considering common-sense factors related to relevancy.*

 - Not all records indicate relevant misconduct: Prohibit denial of applicants unless the conviction “directly relates” to the occupation.
 - Clearer guidance means fairer outcomes: List specific factors for determining whether a direct relationship exists (e.g., elements of the offense; specific duties of the occupation; and how a license offers unique possibility for public safety concerns beyond harm an unlicensed person could cause).

- 3** *Mandate consideration by boards and agencies of evidence of rehabilitation and mitigating circumstances.*

 - Rap sheets oversimplify to the point of distortion: Consider circumstances of the offense, including age of the person at that time.
 - Recent efforts matter: Consider evidence of work or volunteer history and letters of reference.

Vague Terminology Increases Unpredictable Outcomes & Discrimination

Laws and regulations that invoke vague standards—such as “good moral character” or “crimes of moral turpitude”—reduce predictability, consistency, and fairness among decisions, while allowing implicit bias to impact outcomes.

Promote Fairness by Considering Common-Sense Relevancy Factors

To comply with Title VII of the Civil Rights Act of 1964, employers should consider three simple, common-sense factors when contemplating a record-related rejection:

- (1) Nature and gravity of the offense;**
- (2) Time that has passed since the offense; and**
- (3) Nature of the job**

Fair and effective occupational licensing laws similarly require state agencies to weigh the time since an offense and prohibit exclusions based on convictions that aren’t occupation-related.²⁷

→ For more information, visit <https://www.nelp.org/campaigns/fair-chance-licensing-people-records/>

This fact sheet was made possible with the generous support of the Lumina Foundation.

© 2020 National Employment Law Project. This report is covered by the Creative Commons “Attribution-NonCommercial-NoDerivs” license fee (see <http://creativecommons.org/licenses>). For further inquiries, please contact NELP (nelp@nelp.org).

ENDNOTES

¹ NELP, *Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions* app. E (2019),

<https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>.

² U.S. Dep’t of Labor, Bureau of Labor Stats., *Employment Projections—2016-2026*, <https://data.bls.gov/projections/occupationProj> (last visited Nov. 1, 2019).

³ Or. Rev. Stat. § 678.111.

⁴ Or. Rev. Stat. § 678.442. Also called “certified nursing assistant,” “CNA,” or “nurse aide.” Or. Rev. Stat. § 678.448.

⁵ Or. Rev. Stat. § 419A.262(19).

⁶ Or. Rev. Stat. § 670.280.

⁷ Or. Rev. Stat. §§ 678.111(1)(a), 678.442(2)(a).

⁸ Or. Rev. Stat. § 443.004. While technically not licensed or certified occupations in Oregon, aspiring homecare or personal support workers are required to clear strict background checks before working in many common medical settings, such as for a home health agency, in-home care agency, or residential facility, or in a position supported by public funds (e.g., Medicaid).

⁹ Or. Rev. Stat. § 443.004.

¹⁰ Or. Rev. Stat. § 181A.195.

¹¹ Or. Rev. Stat. § 419A.262(19).

¹² Or. Rev. Stat. § 181A.195.

¹³ *Id.*

¹⁴ Or. Rev. Stat. § 326.604

¹⁵ Or. Rev. Stat. § 342.223.

¹⁶ Or. Rev. Stat. § 342.143.

¹⁷ Or. Rev. Stat. § 181A.195(10)(c).

¹⁸ Or. Rev. Stat. § 670.280(3).

¹⁹ Or. Rev. Stat. § 419A.262(19).

²⁰ Or. Rev. Stat. § 181A.195.

²¹ Or. Rev. Stat. §§ 329A.030, 181A.195. Although childcare workers need not be directly certified by the state, childcare facilities must be certified and ensure that all childcare workers satisfy strict background check standards.

²² Or. Rev. Stat. §§ 181A.855, 181A.875.

²³ Or. Rev. Stat. § 670.280(3).

²⁴ Or. Rev. Stat. § 419A.262(19).

²⁵ Or. Rev. Stat. § 670.280.

²⁶ Or. Laws 2017, ch. 526.

²⁷ See, e.g., Equal Emp’t Opportunity Comm’n, *Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964* (2012), https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.