

California "Ban the Box"
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1008

- Effective **January 1, 2018**
- Applies to employers with five or more employees

Key Provisions of the Ordinance

- It is an unlawful employment practice for an employer with **five or more employees** to do any of the following:
 - To **include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history.**
 - To **inquire into or consider the conviction history of the applicant, including inquiry about conviction history on any application, until the employer has made a conditional offer of employment to the applicant.**
 - To **consider, distribute, or disseminate information about any of the following** while conducting a conviction history check in connection with any application for employment:
 - **Arrest not followed by a conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of section 432.7 of the Labor Code.**
 - **Referral to or participation in a pre-trial or post-trial diversion program.**
 - **Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law.**
- An employer that **intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history** shall make an **individualized assessment** of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment, the employer shall consider all of the following:
 - **The nature and gravity of the offense or conduct.**
 - **The time that has passed since the offense or conduct and completion of the sentence.**
 - **The nature of the job held or sought.**
- An employer may, but is not required to, commit the results of this individualized assessment to writing.
- If the employer makes a **preliminary decision that the applicant's conviction history disqualifies the applicant from employment, the employer shall notify the applicant of this preliminary decision in writing.** That notification may, but is not required to, justify or explain the employer's reasoning for making the preliminary decision. The notification shall contain all of the following:
 - **Notice of the disqualifying conviction(s) that are the basis of the preliminary decision to rescind the offer.**
 - **A copy of the conviction history report, if any.**
 - **An explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that**

is both the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both.

- The applicant shall have at least **five business days to respond** to the notice provided to the applicant **before the employer may make a final decision**. If, within the five business days, the **applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history report that was the basis for the preliminary decision to rescind the offer and that the applicant is taking specific steps to obtain evidence supporting the assertion, then the applicant shall have an additional five business days to respond to the notice.**
- The employer shall **consider the information submitted by the applicant before making a final decision.**
- If an employer makes a **final decision to deny an application solely or in part because of the applicant's conviction history, the employer shall notify the applicant in writing** of all of the following:
 - **The final denial or disqualification. The employer may, but is not required to, justify or explain the employer's reasoning for making the final denial or disqualification.**
 - **Any existing procedure the employer has for the applicant to challenge the decision or request reconsideration.**
 - **The right to file a complaint with the Department of Fair Employment and Housing.**
- Exemptions: positions for which a state or local agency is otherwise required by law to conduct a conviction history background check, positions with a criminal justice agency, as defined in Section 13101 of the Penal Code, positions as a Farm Labor Contractor, as described in Section 1685 of the Labor Code, and positions where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history.
- The remedies under this section shall be **in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.**

Recommended Actions in Preparation for January 1, 2018

- If you have not already done so, review job applications and remove any criminal records question.
- Review all employment material and remove any question regarding the applicant's willingness to submit to a background check before a conditional offer.
- Rescind any automatic rules in place to exclude candidates with criminal records from employment.
- Review your hiring and interview policies and processes. Revise them to delay inquiry into criminal history until AFTER a conditional offer of employment.
- Train all individuals involved in recruitment, hiring, interviewing, and individualized assessments to comply with the requirements of this law.
- Establish protocol for handling individualized assessments.

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