

California Law Restricts Employer's Consideration of Job Applicants' Criminal History

Governor Jerry Brown has signed [A.B. 1008](#) which amends the California Labor Code effective January 1, 2018, to prohibit employers from considering or inquiring about "an applicant's conviction history," "arrests not followed by conviction," "referral to or participation in a pretrial or post-trial diversion program" or convictions that have been voided, prior to extending a "conditional offer of employment."

An employer that wants to deny an applicant a position solely or in part due to the applicant's criminal history must make an "individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific job that justif[ies] denying the applicant the position." In other words, the employer should be prepared to show a true business necessity when deciding to withdraw or deny a job offer due to the fact, nature or type of a criminal conviction.

If an employer intends to disqualify an applicant solely or in part based on conviction history, the employer must "notify the applicant of this preliminary decision in writing." The preliminary notice must identify the disqualifying conviction, include a copy of the conviction history report, if any, and explain the applicant's right to respond by challenging the accuracy of the conviction or adducing evidence of rehabilitation or mitigation. The applicant has five business days to respond to the notice before the employer may make a final decision and the applicant also has five additional business days to dispute the accuracy of the conviction history report and adduce supporting evidence.

If the employer decides to disqualify an applicant solely or in part based on conviction history, the employer must again notify the applicant in writing of the final denial. The final notice must identify any existing procedure the employer has to challenge the decision and explain the applicant's right to file a complaint with the California Department of Fair Employment and Housing (DFEH).

Consideration of an applicant's criminal history will be permissible only after a conditional offer of employment has been extended and, even then, it requires the employer to conduct a fact specific and individual assessment of the applicant, connecting the applicant's conviction, or conviction history, to the specific nature of the job.

Employers should ensure that their hiring processes comply with the new California law by reviewing their hiring policies and recruiting documents to confirm that hiring applications do not inquire about conviction history, that individualized assessments will be conducted prior to any preliminary denials based on conviction history, that notices of adverse action are disseminated in a timely fashion, and that any new information from the applicant will have to be considered before a contested decision not to hire is finalized.

This report is from your California Employment Law team.

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