

New Criminal History Hiring Regulations for California Employers

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Employers hiring in California

must be aware that on **July 1**, new California Fair Employment and Housing Council regulations take effect, limiting use of criminal history when making employment decisions. ***Every nationwide company that hires in California should check its employee applications and processes to ensure compliance with this new rule.*** Employers are now prohibited from using criminal history information unless the employer can show that its policy or practice is job-related and consistent with business necessity.

The forms of criminal history that may not be considered are:

1. An arrest or detention that did not result in conviction;
2. Referral to or participation in a pretrial or post-trial diversion program;
3. A conviction that has been judicially dismissed or ordered sealed, expunged, or statutorily eradicated pursuant to law;
4. An arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law; and

5. A non-felony conviction for possession of marijuana that is two or more years old. The entire regulation can be found [here](#): Employers may also be subject to local laws or city ordinances, that provide additional limitations. For example, employers in Los Angeles [[LA Ordinance](#)] and San Francisco [[SF Ordinance](#)] cannot even ask, and must remove from employment applications, questions on criminal history, the so-called “ban the box” statutes. State or local agency employers are prohibited from asking employment applicants to disclose information concerning their conviction history, until the employer has determined that the applicant meets the minimum employment qualifications stated in the job posting. Employers that obtain investigative consumer reports such as background checks are also subject to the requirements of the Fair Credit Reporting Act and the California Investigative Consumer Reporting Agencies Act. Other forms of criminal convictions not enumerated in the law may have an adverse impact on individuals on a basis that is protected by the law, including, but not limited to, gender, race, and national origin. Before the employer makes an adverse employment decision based on criminal history, the employer must give the affected individual notice of the disqualification and a reasonable opportunity to respond. If an employer’s policy or practice of considering criminal convictions creates an adverse impact on applicants or employees on a basis enumerated in the law, the burden shifts to the employer to establish that the policy is justifiable because it is job-related and consistent with business necessity. We recommend that employers and other covered entities review their policies and procedures, and ensure they conform with the new Criminal History Hiring regulations. Should you have any questions regarding this development, or matters related to Criminal History Hiring Regulations, please do not hesitate to contact [Mark A. Neubauer](#) or [Gailya McElroy](#).

Authored By



[Mark A. Neubauer](#)

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