
Rights of Job Seekers with Criminal Records

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Learn about your rights as a job seeker in California with a criminal record.

What is the California Fair Chance Act (also known as a Ban the Box law), and what are your rights?

The California Fair Chance Act protects job applicants from discrimination based on their criminal history. The law, which became effective on January 1, 2018, limits when and what employers can ask about criminal history. The law also gives applicants the right to provide additional information about themselves before the employer can reject them because of that history. The law applies to all private and public employers, with some exceptions.

Because it changed existing state laws, it is important to carefully read through the following fact sheet. This fact sheet will also cover parts of California Labor Code § 432.7 and the California Investigative Consumer Reporting Agencies Act, which also regulate employers and commercial background check companies. Other laws, including laws prohibiting employment discrimination based on disability or race, may also apply.

What does “Ban the Box” refer to?

“Ban the Box” refers to the box or question on employment applications that asks applicants whether they had a criminal history— for example, if they had been convicted of a felony or other crimes. As explained below, most employers can no longer ask these types of questions on job applications.

Which employers are covered by the California Fair Chance Act?

Employers, whether public or private, that have 5 or more employees.

However, the protections of this bill do not cover positions:

- for which a state or local agency is otherwise required by law to conduct a criminal background check;
- with a criminal justice agency (like police departments, district attorney offices, Sheriff's departments, etc.);
- as farm labor contractors (companies that hire agricultural workers);
- where the law requires an employer to conduct criminal background checks or restrict employment based on criminal history.

What covered employers can't do:

The California Fair Chance Act regulates what criminal history information employers can consider, when they can consider it, and what they must do if they intend to deny someone a job based on that criminal history. Specifically, under the California Fair Chance Act and the closely related California Labor Code § 432.7, covered employers cannot:

- Include questions about your conviction history on a job application;
- Ask about your criminal history, including at an interview, before making a conditional job offer ("conditional job offer" means an offer of employment that is pending, subject to a background check);
- Ask about or consider information about: (1) arrests that didn't lead to convictions (unless the applicant is out on bail or on his or her own recognizance pending trial), (2) participation in pretrial or post-trial diversion programs, or (3) convictions that have been sealed, dismissed, expunged or statutorily eradicated;
- Ask about or consider information about arrests, detentions, processing, diversions, supervision, adjudications, or court dispositions stemming from juvenile courts.

What information is "off-limits" for most employers to use in making a decision about my job?

In general, employers may not consider the following information when making employment-related decisions, including whether to revoke a conditional job offer:

- Arrests or detentions that did not result in conviction (except if the employee or applicant is out on bail or on his or her own recognizance pending trial);
- Referral to or participation in pretrial or post-trial diversion programs;
- Convictions that have been sealed;
- Convictions that have been dismissed (sometimes called "expunged");
- Convictions that have been statutorily eradicated;
- Convictions for which a full pardon has been received;
- Convictions for which a person has been issued a certificate of rehabilitation;
- Information about arrests, detentions, processing, diversions, supervision, adjudications, or court dispositions stemming from juvenile courts.

Note: in San Francisco, there is additional information that is off-limits for employers covered by the San Francisco Fair Chance Ordinance (see below).

What covered employers can do:

- **After** making a conditional job offer, employers may conduct a criminal history or background check (but in most cases, are not required to do so). However, the employer is required to make an individualized assessment of your conviction history, evaluating factors such as: the nature and seriousness of your criminal history; the amount of time that has passed; and the nature of the job sought and whether the criminal history is directly related to the position.
- If the employer decides to take back its job offer, it must do so in writing, notify you of which conviction was disqualifying, provide a copy of any report or background check they relied on, and give you at least **five business days** to respond to the decision (see below for how you can respond).
- The employer must then consider your response, taking into account any evidence of mistakes or rehabilitation you provided.
- If the employer still wants to revoke your job offer, it must provide you with a final written notice, with information about how to challenge the decision with the company and/or file with the Department of Fair Employment and Housing (see below).

Separately, the California Investigative Consumer Reporting Agencies Act requires employers that use background check services to notify you about: the purpose of the background report; the name, address and telephone number of the company doing the background check; a summary of your rights to see any report about you; and your ability to request a copy of the report. When running searches in-house, employers must generally allow applicants to receive a copy of the public records used to create the report and obtain your written permission to run a background check when using a third-party screening company.

What can you do?

- Request a copy of the background report.
- Respond to the employer’s notice by pointing out and submitting proof of errors in the records it relied on.
- Respond to the employer’s notice by submitting evidence of rehabilitation. Evidence of rehabilitation can include: (1) proof of enrollment or completion of high school; (2) letters of recommendation from previous teachers or professors; (3) proof of completion of rehabilitation programs after the conviction; (4) letters from probation or parole officers attesting that you satisfied all terms of probation or parole; (5) letters from recovery programs and/or counselors attesting to your current state of rehabilitation (e.g. substance abuse treatment or anger management courses); (6) letters of recommendation from counselors, instructors, or employers; (7) proof of community service, education or other self-improvement efforts; (8) letters from a psychologist or other mental health or medical professional; (9) letters of support from others; (10) a personal statement from you describing your rehabilitative efforts, or any changes you have made to improve your life.
- Prepare now! Gather your own criminal records (which can include getting a copy of your RAP sheet). For questions related to obtaining or verifying your criminal history records, click [here](#).
- Participate in clean slate legal services to have your criminal records dismissed (often referred to as “expungement”). For clean slate assistance in California, click [here](#). For clean slate assistance in other states, visit [National H.I.R.E Network](#).
- Document everything. Keep copies of the application, background check, any correspondence between you and the employer or its representative, and any other relevant materials in a safe place. Keep notes for yourself of any verbal communications, including in-person and phone conversations, and include the details of who, what, where, and when.
- Contact Legal Aid at Work for assistance! Visit our website and browse our fact sheets (like [this one](#) on discrimination) or call in to one of our [Workers’ Rights Clinics](#) for a free consultation.
- If you disagree with the employer’s decision, you have the right to file a complaint with the California Department of Fair Housing and Employment (DFEH). You can do so by:

- *filling out an online complaint form here: https://ccrs.dfeh.ca.gov/DFEH_Login;*
- *downloading the complaint form and either emailing it to contact.center@dfeh.ca.gov, or mailing it to the DFEH at 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758;*
- *calling the DFEH at: 800-884-1684 (voice), 800-700-2320 (TTY) or California’s Relay Service at 711;*
- *visiting the DFEH in person.*

What about discrimination?

If you believe you have been discriminated against in hiring based on your disability, race, gender, ethnicity, national origin, religion, pregnancy, age, sexual orientation, gender identity or military and veteran status, you may have rights and remedies under other state or federal employment laws.

For example, if an employer rejects an African-American applicant based on her criminal record but hired a similar White applicant with a comparable criminal record, race discrimination may be present. Evidence of biased statements, inconsistent hiring processes, or statistical evidence that tends to show that criminal background history weighs more heavily against protected groups than non-protected groups can also establish a discrimination claim.

What if my criminal history involves substance abuse?

Past drug addiction may qualify as a disability under state and federal employment discrimination laws. If you are receiving treatment for drug and/or alcohol addiction and no longer using illicit substances, you may have additional rights. Please contact Legal Aid at Work at 1-415-864-8848 or make an appointment at one of our [Workers’ Rights Clinics](#) for more information.

What if the employer says they will not hire anyone with a felony?

If an employer has a policy or practice of not hiring anyone with a felony conviction, that could also implicate federal and state employment discrimination laws. Blanket bans against anyone with a felony conviction are likely unlawful. Please contact Legal Aid at Work at 1-415-864-8848 and ask for our [Racial Economic Justice program](#).

What is different in Los Angeles and San Francisco?

Los Angeles and San Francisco have their own “Fair Chance” ordinances that provide additional rights for job seekers.

San Francisco, in April 2018, passed its own “Ban the Box” ordinance which provides added protections for workers. In particular, covered employers in San Francisco:

- cannot consider an offense other than a felony or misdemeanor, such as an infraction.
- cannot consider a conviction that is more than 7 years old (unless the position being considered supervises minors or dependent adults)
- cannot consider a conviction for decriminalized conduct, including the non-commercial use and cultivation of cannabis.

Los Angeles also has its own ordinance. That law requires:

covered employers to provide a “fair chance process” after conducting an individualized assessment about the conviction and deciding not to hire someone. That process requires the employer to: provide the applicant with written notice of the action; hold the job open for at least 5 business days after the applicant has been informed; and allow the applicant an opportunity to submit documentation while the job is held open.

DISCLAIMER

This Fact Sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, Legal Aid at Work cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.