

Resources

California's New Regulations Limiting Consideration of Criminal History in Employment Decisions: What Employers Need to Know

June 30, 2017

On July 1, 2017, amendments to California's Fair Employment and Housing Regulations take effect, further restricting the consideration of criminal history in making employment decisions.

For example, while the law previously prohibited consideration of certain marijuana infractions, now any non-felony marijuana conviction that is older than two years may not be considered.

Also, while employers can consider certain criminal information, they may be subject to liability if the hiring practice disproportionately affects members of a protected class (such as race, national origin or gender).

The new regulations also require employers to give candidates notice before making an adverse employment decision (such as a decision not to hire or a decision not to promote or transfer) and to allow the candidates a reasonable opportunity to present evidence that the conviction is factually inaccurate.

Los Angeles' "Ban-the-Box" Ordinance

For those in the City of Los Angeles, the rules are even more stringent under the **Fair Chance Ordinance [1]**, that is often referred as the "ban-the-box" ordinance. Penalties and fines for violating Los Angeles municipal rules will be assessed as of July 1, 2017.

The "**Fair Chance Initiative**" prohibits employers from inquiring about job seekers' criminal convictions *until after a conditional offer* of employment has been made. Only then may employers request information regarding the applicant's criminal history.

"Ban the Box" means delete the question on job applications inquiring about criminal convictions.

The conditional offer can only be withdrawn because of the applicant's criminal history **after** the employer or city contractor engages in the "**Fair Chance Process.**"

- This process requires employers to *prepare a written assessment illustrating how the applicant's criminal history poses a risk to the duties of the position sought by the application*. The applicant must be provided with notice of this assessment and given an opportunity to respond; the employer cannot terminate the conditional offer or fill the position until five business days after the applicant is given the written assessment.
- A violation of the Fair Chance Initiative carries a maximum penalty of \$2,000 per occurrence, up to \$500 of which may be given to the applicant by the city. **Exceptions** to these ordinances include:
 - employers *required by law* to review an applicant's criminal history;
 - positions for which an applicant would be *required to possess or use a firearm*;
 - positions which, *by law, cannot be held by an individual with a criminal history*; and
 - *employers that are prohibited, by law, from hiring persons with criminal convictions.*

For more information about this alert, please contact Laura P. Worsinger, Madeleine K. Lee, or your Dykema relationship attorney.

California's New Regulations Limiting Consideration of Criminal History in Employment Decisions: What Employers Need to Know (Cont.)

[1] San Francisco already has a "Ban the Box" ordinance with similar requirements.

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Practice Areas

Labor & Employment

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