

CLIENT NEWS BRIEF

Asking Job Applicants about Criminal Conviction History: What You Need to Know about Assembly Bill 1008

Effective January 1, 2018, Assembly Bill (AB) 1008 amends the Fair Employment and Housing Act (FEHA) to restrict an employer's ability to make hiring decisions based on a job applicant's criminal conviction history.

Background

AB 1008 prohibits an employer from asking about criminal conviction history until the applicant has received a conditional offer of employment. After a conditional offer of employment has been made, an employer may conduct a criminal conviction history background check. If the background check reveals that the applicant has one or more criminal convictions, then the employer must make an individualized assessment of whether the applicant's criminal convictions have a direct and adverse relationship with the specific duties of the job the applicant is applying for.

If an employer wishes to rescind the conditional offer based solely or in part on the applicant's criminal conviction history, the employer must inform the applicant of its preliminary decision in writing and allow the applicant an opportunity to respond. An employer must consider the applicant's response when making its final hiring decision. If an employer ultimately decides to rescind the conditional offer, the employer must inform the applicant of its decision in writing and inform the applicant of the right to appeal its decision and the process for doing so.

While there are limitations on the reach of AB 1008, it creates significant liability implications for employers covered by the bill as it allows applicants denied employment to sue under the FEHA and also, to recover the broad range of damages available under the FEHA, including compensatory damages, attorney's fees, and costs.

Below is a brief FAQ that explains how the new law will be applied to public agencies.

Does AB 1008 Apply to K-12 School Districts, Charter Schools and Community College Districts?

No, it does not. Newly created Government Code section 12952 contains two important exceptions. Specifically, the new law does not apply to:

- "[A] position for which a state or local agency is otherwise required by law to conduct a conviction history background check" (Gov. Code, § 12952 (d)(1)); or
- "[A] position 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." (Gov. Code, § 12952 (d)(4)).

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As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

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The Education Code provides that applicants for all positions at a K-12 school district, charter school or community college district must undergo a criminal conviction history background check. The Education Code also restricts school employment based on criminal history. The applicable statutes support a conclusion that the new requirements imposed on employers by AB 1008 do not apply to K-12 school districts, charter schools or community college districts.

Does AB 1008 Apply to Local Government Agencies Such as Cities and Special Districts?

Yes, unless an exception covers the particular position the applicant is seeking. AB 1008 will generally apply to other local government agencies except in those cases where the agency is required to conduct a criminal conviction history background check or to restrict employment based on criminal history. For example, public safety and some health profession positions, which require criminal conviction history background checks, will be exempt from AB 1008. Local government employers should carefully assess which positions AB 1008 applies to and tailor their application materials for the individual requirements of each position.

Takeaways

Employers are not legally required to ask for criminal conviction history information on application materials. Rather, they are only legally required, in some circumstances, to conduct a criminal conviction history background check and/or to restrict employment prior to hiring an applicant. Employers that are covered by AB 1008 should remove questions regarding criminal conviction history from their applications, while those that are not may voluntarily choose to remove questions regarding criminal conviction history from their application materials.

Employers may be concerned that screening applicants for criminal convictions, even minor crimes and crimes from many years ago, may result in a discriminatory impact on minority groups such as African-American and Latino men. Therefore, employers not covered by AB 1008 that ask for criminal conviction history information on application materials may wish to make individualized assessments of an applicant's prior convictions in order to ensure that the questions do not disproportionately screen out minority applicants.

For more information on AB 1008 or on job applicant screening in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).