

# CLIENT NEWS BRIEF

## Legislature Further Limits the Ability to Consider Expunged, Dismissed, or Sealed Convictions in Hiring Decisions

Senate Bill (SB) 1412, which takes effect on January 1, 2019, builds on prior law limiting consideration of expunged, dismissed, or sealed convictions in hiring decisions. SB 1412 prevents employers from requiring job applicants to disclose certain criminal convictions that have been expunged, dismissed, sealed, or statutorily eradicated. SB 1412 also provides that employers may only consider particular expunged convictions that are enumerated in the law when making hiring decisions. Exceptions to this prohibition remain for employers—like public school districts and certain other public agencies—that are prohibited from hiring individuals with certain convictions even if the conviction has been dismissed, expunged, or sealed.

### Background

In recent years, the Legislature has focused on limiting the types of convictions that may be considered by employers when making hiring decisions. For example, in 2016, AB 1843 was passed generally prohibiting employers from seeking or using information about an applicant's juvenile convictions in hiring decisions. ([See 2016 Client News Brief No. 86.](#))

Separate from the use or consideration of juvenile convictions in hiring, existing law prevents employers from requiring applicants to disclose convictions that have been expunged, dismissed, or sealed, subject to several exceptions. These exceptions include situations where: (1) the employer is required by law to obtain information regarding an applicant's convictions; (2) the applicant is applying for a job that would require him to possess or use a firearm; (3) the law prohibits an individual convicted of a crime from holding the position, even if the conviction is expunged, sealed, or dismissed; or (4) the law prohibits the employer from hiring an applicant who has been convicted of a crime. Aside from the above exceptions, once a conditional offer of employment has been made to an applicant, an employer may consider an expunged, dismissed, or sealed conviction.

Since January 1, 2018, California's Fair Employment and Housing Act also prohibits similar conduct, with specified exemptions. ([See 2017 Client News Brief No. 80](#); [2016 Client News Brief No. 86.](#))

Under the above legal protections for job applicants, concerns were raised that employers have been broadly rejecting applicants with expunged convictions, regardless of the nature of these convictions or their relevance to the job or future job performance. With SB 1412, the Legislature narrows the aforementioned exceptions so employers may only consider expunged, dismissed, sealed, or statutorily eradicated convictions that are enumerated in the law. Specifically, this bill provides that employers may only consider such convictions if: (1) the employer is required by law to obtain information regarding the particular conviction of the applicant, regardless of whether the conviction has been expunged, sealed, dismissed, or statutorily eradicated; (2) the applicant would be required to possess or use a firearm in the course of his

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or her employment; (3) the law prohibits an individual with that particular conviction from holding the position sought, regardless of whether the conviction has been expunged, sealed, dismissed, or statutorily eradicated; or (4) the employer is prohibited by law from hiring an applicant who has that particular conviction, regardless of whether that conviction has been expunged, sealed, dismissed, or statutorily eradicated.

## Takeaways

Employers should note that the Legislature has instituted additional protections for the consideration of expunged convictions in the applicant screening process. Under the SB 1412, employers can only ask an applicant about or consider expunged, sealed, or dismissed convictions to the extent permitted by law; they cannot simply withdraw an offer merely because an applicant has a conviction that was dismissed, expunged, or sealed. Keep in mind that public school employers are prohibited from hiring individuals convicted of certain crimes, even if such convictions have been dismissed, expunged, or sealed. The laws concerning the use of criminal convictions in hiring public school staff is highly technical and should be carefully reviewed before making a hiring decision based on a conviction, even if it has been dismissed, expunged, or sealed.

If you have any questions about SB 1412, 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](#).

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