

# Infractions, Summary Offenses and Ordinance Violations

## Question:

How should an employer treat infractions, summary offenses and ordinance violations?

## Response & Analysis:

There are wide-ranging differences between states with respect to the definitions and offenses/violations that fall within the spectrum of infractions, summary offenses and/or ordinance violations. Generally, petty or summary offenses and infractions are the lowest level of criminal offenses, and may not even be considered “criminal” in some states. Infractions and summary offenses usually allow the defendant to be tried without a jury before a judge or magistrate, and usually only carry a fine as punishment.

Offenses that often fall into this category include parking and speeding tickets, driving without a license, disorderly conduct, public intoxication, underage possession of alcohol and petty theft. However, depending on the circumstances, certain offenses can be charged as an infraction or as a misdemeanor—a more serious offense. For example, in California, petty theft can be considered either an infraction or a misdemeanor.<sup>1</sup> Often times the value of the property destroyed/stolen or the overall severity of the offense will escalate the charge from an infraction to a misdemeanor.

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<sup>1</sup> Cal. Penal Code § 490.1.

A blurred background image showing a hand holding a pen and writing on a document.

An “ordinance” is “a municipal law, rule, or regulation that applies to a specific town or city limits.”<sup>2</sup> For example, ordinances can range from forbidding unleashed dogs while on public property to prohibiting open containers of alcohol in public places. Some localities across the United States have chosen to decriminalize the possession of a small amount of marijuana by making it an ordinance violation that carries a fine and no jail time. However, because each town has its own set of ordinances, the range of different violations can be very broad from one locality to the next. Just as ordinances differ from county to county, the punishments for ordinance violations differ as well. Punishments will depend on the location of the incident and are generally less severe than for a misdemeanor charge.<sup>3</sup>

Subject to the Fair Credit Report Act’s (and analogous state laws) reporting limitations, any time an infraction, summary offense or ordinance violation is part of the public record that a state makes available to a consumer reporting agency, it will be included in a consumer’s background check report.

However, while these records may be included in a background check, it may not always be lawful for an employer to consider such records in making employment decisions. Depending on your respective state’s laws, some or all of these types of offense records may not be used for employment purposes.

For example, Massachusetts prohibits employers from requesting information about arrests without convictions, a first conviction for a misdemeanor or a minor traffic violation, or a misdemeanor that is five years before the application date.<sup>4</sup> Employers in Hawaii may neither ask about nor consider arrest records that did not result in a conviction and are prohibited from discriminating on the basis of a person’s arrest or court record unless an exception applies.<sup>5</sup> California prohibits employers from asking about minor marijuana convictions that are more than two years old.<sup>6</sup> Similarly, Maryland’s Office of Fair Practices “Guidelines for Pre-Employment Inquiries” cautions employers not to ask about an applicant’s

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<sup>2</sup> *What is an Ordinance Violation?*, PROLY, LAPORTE & MULLIGAN P.A., <http://www.accidentshappenattty.com/ordinance-violation>.

<sup>3</sup> *Id.*

<sup>4</sup> Mass. Gen. Laws Ann. Ch. 151(B) § 4(9).

<sup>5</sup> Hawaii Rev. Stat. § 378-2(1).

<sup>6</sup> California Labor Code § 432.8.

arrest record or general conviction record and indicates that employers should only ask about convictions that bear a direct relationship to the job for which the applicant is applying.<sup>7</sup>

Employers must be aware of the various laws and regulations in the jurisdictions in which they operate to ensure that their hiring processes are fully compliant. Furthermore, while infractions, summary offenses and ordinance violations are generally considered less serious offenses, they can sometimes involve behaviors that may be problematic in certain employment settings.

Thus, employers should carefully consider the positions being applied for and the circumstances surrounding each incident when evaluating prospective and current employees.

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<sup>7</sup> *Guidelines for Pre-Employment Inquiries Technical Assistance Guide - Interviews and Applications for Employment*, Md. Dep't of Labor, Licensing & Regulation (June 9, 2009), <http://www.dlir.state.md.us/oeope/preemp.shtml>.

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