



Details matter.

## California “Ban the Box” FAQs

### Assembly Bill No. 1008

**1. Who does the law apply to?**

All employers in California with five or more employees.

**2. What is the effective date?**

Jan. 1, 2018.

**3. When is it permissible to ask an applicant about criminal records?**

After a conditional offer of employment is made.

**4. Does the law affect when you can conduct a background check?**

Yes. Employers may not conduct criminal background checks until after a conditional offer of employment.

**5. Are there any “pre-adverse” notification requirements beyond those of the FCRA?**

Yes. An employer cannot deny an applicant a position solely or in part because of conviction history until the employer performs an individualized assessment. This assessment must justify denying the applicant the position by linking relevant conviction history with specific job duties of the position sought. In particular, the assessment would have to consider:

- The nature and gravity of the offense and conduct;
- The time that has passed since the offense or conduct and completion of the sentence;
- The nature of the job held or sought.

The law provides that the employer “may, but is not required to, commit the results of this individualized assessment to writing.”

Once the employer makes a preliminary decision that the applicant’s conviction history is disqualifying, the employer must notify the applicant of this preliminary decision in writing. However, the employer is not required to justify or explain to the applicant its reasoning for making the preliminary decision, but the employer must:

- **Provide written notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer;**
- Include a copy of the conviction history report, if any; and



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- Provide an explanation that the applicant has the right to respond to the notice within at least five (5) business days, and that the response may include submission of evidence challenging the accuracy of the conviction record, or evidence of rehabilitation or mitigating circumstances or both.

**6. Are there any “adverse action” notification requirements beyond those of the FCRA?**

Yes. The employer cannot make any final determination based on conviction history during the five (5) business day period. If the applicant timely notifies the employer in writing that he or she is disputing the conviction history and is taking steps to obtain evidence to support this, the employer must provide five (5) additional business days for the applicant to respond to the notice. The employer must also consider any additional evidence or documents the applicant provides in response to the notice before making a final decision.

If the employer ultimately decides to take the adverse employment action based on the conviction history, the employer must notify the applicant of this in writing, and include notification of any existing procedure the employer has to challenge the decision, as well as notification of the applicant’s right to file a complaint with the Department of Fair Employment and Housing.

**7. Are there any other additional notice/disclosure requirements?**

No.

**8. Does the law impose any additional restrictions or requirements on employers?**

No.

**9. Does the law allow employment applications to still include the criminal history question with a carve-out for this jurisdiction?**

The law makes no mention of whether or not this practice is permitted.

**10. Does the law provide any exceptions?**

Yes. The law does not apply in any of the following circumstances:

- a. To a position for which a state or local agency is otherwise required by law to conduct a conviction history background check.
- b. To a position with a criminal justice agency, as defined in Section 13101 of the Penal Code.
- c. To a position as a Farm Labor Contractor, as described in Section 1685 of the Labor Code.



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- d. To 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. For purposes of this paragraph, federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203), pursuant to the authority in Section 19(b) of the Securities Exchange Act of 1934, as amended by 124 Stat. 1652 (Public Law 111-203).

**11. Does the law supersede or preempt any other law?**

No.