

GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (*Title 2 enacted by Stats. 1943, Ch. 134.*)

DIVISION 3. EXECUTIVE DEPARTMENT [11000 - 15986] (*Division 3 added by Stats. 1945, Ch. 111.*)

PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING [12900 - 12999] (*Part 2.8 added by Stats. 1980, Ch. 992.*)

CHAPTER 6. Discrimination Prohibited [12940 - 12957] (*Chapter 6 added by Stats. 1980, Ch. 992.*)

ARTICLE 1. Unlawful Practices, Generally [12940 - 12953] (*Article 1 added by Stats. 1980, Ch. 992.*)

(a) Except as provided in subdivision (d), it is an unlawful employment practice for an employer with five or more employees to do any of the following:

12952.

(1) To include on any application for employment, before the employer makes a conditional offer of employment to the applicant, any question that seeks the disclosure of an applicant's conviction history.

(2) To inquire into or consider the conviction history of the applicant, including any inquiry about conviction history on any employment application, until after the employer has made a conditional offer of employment to the applicant.

(3) To consider, distribute, or disseminate information about any of the following while conducting a conviction history background check in connection with any application for employment:

(A) Arrest not followed by conviction, except in the circumstances as permitted in paragraph (1) of subdivision (a) and subdivision (f) of Section 432.7 of the Labor Code.

(B) Referral to or participation in a pretrial or posttrial diversion program.

(C) Convictions that have been sealed, dismissed, expunged, or statutorily eradicated pursuant to law, or any conviction for which the convicted person has received a full pardon or has been issued a certificate of rehabilitation.

(4) To interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

(b) This section shall not be construed to prevent an employer from conducting a conviction history background check not in conflict with the provisions of subdivision (a).

(c) (1) (A) An employer that intends to deny an applicant a position of employment solely or in part because of the applicant's conviction history shall make an individualized assessment of whether the applicant's conviction history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. In making the assessment described in this paragraph, the employer shall consider all of the following:

(i) The nature and gravity of the offense or conduct.

(ii) The time that has passed since the offense or conduct and completion of the sentence.

(iii) The nature of the job held or sought.

(B) An employer may, but is not required to, commit the results of this individualized assessment to writing.

- (2) If the employer makes a preliminary decision that the applicant's conviction history disqualifies the applicant from employment, the employer shall notify the applicant of this preliminary decision in writing. That notification may, but is not required to, justify or explain the employer's reasoning for making the preliminary decision. The notification shall contain all of the following:
- (A) Notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer.
 - (B) A copy of the conviction history report, if any.
 - (C) An explanation of the applicant's right to respond to the notice of the employer's preliminary decision before that decision becomes final and the deadline by which to respond. The explanation shall inform the applicant that the response may include submission of evidence challenging the accuracy of the conviction history report that is the basis for rescinding the offer, evidence of rehabilitation or mitigating circumstances, or both.
- (3) The applicant shall have at least five business days to respond to the notice provided to the applicant under paragraph (2) before the employer may make a final decision. If, within the five business days, the applicant notifies the employer in writing that the applicant disputes the accuracy of the conviction history report that was the basis for the preliminary decision to rescind the offer and that the applicant is taking specific steps to obtain evidence supporting that assertion, then the applicant shall have five additional business days to respond to the notice.
- (4) The employer shall consider information submitted by the applicant pursuant to paragraph (3) before making a final decision.
- (5) If an employer makes a final decision to deny an application solely or in part because of the applicant's conviction history, the employer shall notify the applicant in writing of all the following:
- (A) The final denial or disqualification. The employer may, but is not required to, justify or explain the employer's reasoning for making the final denial or disqualification.
 - (B) Any existing procedure the employer has for the applicant to challenge the decision or request reconsideration.
 - (C) The right to file a complaint with the department.
- (d) This section does not apply in any of the following circumstances:
- (1) To a position for which a state or local agency is otherwise required by law to conduct a conviction history background check.
 - (2) To a position with a criminal justice agency, as defined in Section 13101 of the Penal Code.
 - (3) To a position as a Farm Labor Contractor, as described in Section 1685 of the Labor Code.
 - (4) 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).
 - (e) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law, including any local ordinance.
 - (f) For purposes of this section:
 - (1) "Conviction" has the same meaning as defined in paragraphs (1) and (3) of subdivision (a) of Section 432.7 of the Labor Code.
 - (2) Notwithstanding paragraph (1), the term "conviction history" includes:
 - (A) An arrest not resulting in conviction only in the specific, limited circumstances described in subdivision (f) of Section 432.7 of the Labor Code, when an employer at a health facility, as defined in Section 1250 of the Health and Safety Code, may ask an applicant for certain positions about specified types of arrests.
 - (B) An arrest for which an individual is out on bail or his or her own recognizance pending trial.

(Amended by Stats. 2018, Ch. 824, Sec. 2. (AB 2845) Effective January 1, 2019.)