THE “FAIR CHANCE ACT” FACT SHEET

Updated February 2018

SUMMARY: The Fair Chance Act (also called “Ban-the-Box”) went into effect in California on January 1, 2018. This new law provides important protections for people with arrest and conviction records from being discriminated against in employment and in the hiring process. Most importantly, the new law prevents a California employer from asking about a job applicant’s conviction history or running a background check until after the job applicant has received a conditional offer of employment. In other words, if you have not received a conditional offer of employment yet, it is illegal for an employer in California to ask about your criminal record (with a few exceptions, explained below).

The Frequently Asked Questions (FAQ) below explain a job applicant’s rights under the new law!

**Q: Do all employers in California have to follow the rules of the new law?**

**A:** Most—but not all—employers have to follow this new law. It applies to both public (meaning government) and private employers with 5 or more employees. The new law does NOT apply certain types of employers, including employers for which a government agency requires the employer to run a background check on all job applicants.

**Q: When can an employer covered by the new law ask me about my conviction history?**

**A:** Under the new law, an employer must wait to ask about your conviction history until after the employer gives you a conditional offer of employment. This means that an employer cannot ask you about your conviction history at any time before you receive a conditional offer of employment. Specifically, an employer cannot ask about your conviction history on a job application, and cannot ask you about your conviction history just because they made a determination that you have met the minimum qualifications for the job. The employer must now wait until after making you a conditional offer of employment to ask about your conviction history.

**Q: When can an employer covered by the new law run a background check on me?**

**A:** An employer must wait to run a background check until after the employer gives you a conditional offer of employment. This is the same rule for when an employer can ask you directly about your conviction history.

**Q: I thought we already had ‘Ban the Box’ in California! How is this new law different from the previous law?**

**A:** Here is a chart comparing the old law to the new law:

<table>
<thead>
<tr>
<th>Old State Law</th>
<th>New State Law (&quot;FAIR CHANCE ACT&quot;)</th>
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<tbody>
<tr>
<td><strong>Public (Government) Employers:</strong> Before Jan. 1, 2018, public employers in CA could not ask about an applicant’s conviction history until after the employer decided the applicant met the minimum job qualifications.</td>
<td><strong>Public AND Private Employers (with 5+ Employees):</strong> Beginning Jan. 1, 2018, both public and private employers cannot run a background check or inquire into a job applicant’s conviction history until AFTER MAKING A CONDITIONAL OFFER OF EMPLOYMENT TO THE APPLICANT.</td>
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<tr>
<td><strong>Private Employers:</strong> Before Jan. 1, 2018, most private employers in CA could ask about a person’s conviction history in the initial job application (written or verbal).</td>
<td><strong>Local ordinances in places like Los Angeles County and San Francisco</strong></td>
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Q: What can an employer consider about my conviction history?
A: Under another state law known as the Investigative Consumer Reporting Agencies Act (ICRAA), a background check company can report only certain information about your conviction history to the employer. A background check company CANNOT report the following in California:

A. Arrests that did not lead to convictions (unless the case is pending);
B. Arrests, convictions or juvenile adjudications that have been sealed;
C. Convictions that have been dismissed;
D. Statutorily-eradicated convictions (i.e., the conduct is no longer an offense);
E. Diversion programs;
F. Negative information, including convictions, that are more than 7 years old; or
G. Some marijuana-related misdemeanor convictions that are over 2 years old.

The Fair Chance Act also makes it illegal for employers to consider most of the information above (items (A)-(E)) at all.

Q: How will an employer consider my conviction history?
A: After you receive a conditional offer of employment, an employer may check your conviction history. In considering your conviction history, the employer must make an “individualized assessment” to determine whether your conviction history has a direct and adverse relationship with the duties of the job. This means that your conviction must have a negative impact on your ability to do what the job requires. This individualized assessment must consider the nature of the offense, the time since the conviction, and the nature of the job.

Q: What are my rights when the employer takes back my job offer after seeing my conviction history?
A: If the employer decides it wants to take back the job offer, the employer must notify you of the following: (1) the convictions the employer relied on; (2) a copy of the conviction history that the employer relied on; and (3) information on your right to respond, including the deadline to respond and your right to correct any errors, show you have been rehabilitated, or explain circumstances about the offense—such as your age at the time of the offense—that would show the conviction should not be a reason to deny you the job (“mitigation”). Additionally, the employer must also provide you with a pre-adverse notice and notify you of your rights under the federal law (Fair Credit Reporting Act).

Q: What is the deadline for responding to an employer’s decision to take back the offer?
A: The employer must give you at least 5 days from when you received the notification to respond. If you let the employer know that their report contains errors and/or that you want to submit additional evidence for them to consider, you are then entitled to at least 5 additional days to submit additional documents.

Q: What can I include in my response to my employer following notification of the decision to take back the job offer?
A: In your response, you can include information about errors in the copy of your conviction history, an explanation and evidence that you have been rehabilitated, or explain why the conviction should not be a basis to deny you the job.

(“mitigating evidence” like your youth at the time of the offense, whether you were not as involved in committing the offense as it may appear on your record, or whether you were coerced in some way to commit the offense).

**Q: What if I live in a city or county that provides additional rights and protections for job applicants with conviction histories?**

A: If you live in a city or county with local ordinances that provide additional legal protections for job applicants with conviction histories, these additional rights are still in effect. For instance, a Los Angeles City ordinance requires that employers make a written record of their individualized assessment about an applicant’s conviction history in writing.³

**Q: What should I do if an employer has violated the rules of the new law?**

A: You can file a complaint with the *California Department of Fair Employment and Housing (DFEH)* at their website: [dfeh.ca.gov](http://dfeh.ca.gov). You may also file a complaint with the *federal Equal Employment Opportunity Commission (EEOC)* at their website: [https://www.eeoc.gov/employees/charge.cfm](https://www.eeoc.gov/employees/charge.cfm).

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### Additional Questions?

For questions about the Fair Chance Act or other questions about your legal rights with a record, please call Root & Rebound’s reentry legal hotline any Friday, 9:00 am - 5:00 pm PST, at (510) 279-4662 (we accept collect calls).

Find more reentry legal information in the *Roadmap to Reentry: A California legal guide*, available for free as a searchable Wiki site at [roadmap.rootandrebound.org](http://roadmap.rootandrebound.org), or order a hard copy of the guidebook on our website at [www.rootandrebound.org](http://www.rootandrebound.org). Find reentry planning toolkits, resources, and more information about Root & Rebound’s programs and services online at [www.rootandrebound.org](http://www.rootandrebound.org).

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³ Los Angeles Municipal Code Sections 189.02