

## ALERTS

### Labor And Employment Law Alert - California Moves Outside The Box, Imposes New Criminal Background Check Prohibitions

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Expanding upon California's recent legislation on criminal background checks, California Gov. Jerry Brown recently signed Assembly Bill (AB) 1008, which amends the state's Fair Employment and Housing Act (FEHA) and imposes new restrictions on employers' criminal background screening processes. The new law takes effect on Jan. 1, 2018, and applies to all California employers with five or more employees.

Under prior California law, employers could not ask an applicant to disclose conviction information until the applicant was deemed "qualified" for the position. The new law will require employers to defer the criminal background check inquiry until after a conditional offer has been extended to the candidate. Specifically, AB 1008 provides that it is unlawful for employers to do the following:

- To ask an applicant questions that seek the disclosure of conviction history prior to making a conditional offer
- Inquire into or consider the conviction history of the applicant until after a conditional offer has been made
- Consider, distribute or disseminate any of the following information while conducting a conviction history background check
  - an arrest not followed by a conviction, subject to certain exceptions under the Labor Code
  - referral to or participation in a pre-trial or post-trial diversion program
  - convictions that have been sealed, dismissed, expunged, or eradicated pursuant to law

The new law further provides that if an employer intends to deny an application solely or in part because of an applicant's conviction history, it must individually assess whether the history has a direct and adverse relationship with the specific duties of the job that justifies denying the applicant the position. The new law also requires employers who make a preliminary decision to deny employment based on that individualized assessment to provide the applicant a written notification of the decision, containing specific information. The law would also provide the applicant five business days to respond to that notification before the employer makes a final decision.

California employers should consider reviewing their criminal background

## RELATED PEOPLE



**Kenneth J. Yerkes**

Partner  
Indianapolis

P 317-231-7513  
F 317-231-7433  
[ken.yerkes@btlaw.com](mailto:ken.yerkes@btlaw.com)



**William A. Nolan**

Partner  
Columbus

P 614-628-1401  
F 614-628-1433  
[bill.nolan@btlaw.com](mailto:bill.nolan@btlaw.com)



**Mark S. Kittaka**

Partner  
Fort Wayne, Columbus

P 260-425-4616  
F 260-424-8316  
[mark.kittaka@btlaw.com](mailto:mark.kittaka@btlaw.com)



**Robert W. Sikkell**

Of Counsel (Retired)

P 616-742-3978  
[robert.sikkell@btlaw.com](mailto:robert.sikkell@btlaw.com)



screening processes in light of AB 1008. Along with ensuring criminal background checks comply with California law, employers also need to be aware of complex federal and EEO laws that prohibit discrimination on the basis of criminal background history.

To obtain more information, please contact the Barnes & Thornburg Labor & Employment attorney with whom you work, or a leader of the firm's Labor & Employment Law Department in the following offices:

Kenneth J. Yerkes  
Department Chair  
(317) 231-7513

John T.L. Koenig  
Atlanta  
(404) 264-4018

David B. Ritter  
Chicago  
(312) 214-4862

William A. Nolan  
Columbus  
(614) 628-1401

Mark S. Kittaka  
Fort Wayne  
(260) 425-4616

Robert W. Sikkel  
Grand Rapids  
616-742-3978

Peter A. Morse  
Indianapolis  
(317) 231-7794

Scott J. Witlin  
Los Angeles  
(310) 284-3777

Teresa L. Jakubowski  
Washington, D.C.  
(202) 371-6366

Janilyn Brouwer Daub  
South Bend/Elkhart  
(574) 237-1130

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## John T.L. Koenig

Partner  
Atlanta

P 404-264-4018  
F 404-264-4033  
[john.koenig@btlaw.com](mailto:john.koenig@btlaw.com)



## Peter A. Morse, Jr.

Partner  
Indianapolis, Washington, D.C.

P 317-231-7794  
F 317-231-7433  
[pete.morse@btlaw.com](mailto:pete.morse@btlaw.com)



## Scott J. Witlin

Partner  
Los Angeles

P 310-284-3777  
F 310-284-3894  
[scott.witlin@btlaw.com](mailto:scott.witlin@btlaw.com)



## David B. Ritter

Partner  
Chicago

P 312-214-4862  
F 312-759-5646  
[david.ritter@btlaw.com](mailto:david.ritter@btlaw.com)



## Teresa L. Jakubowski

Partner  
Washington, D.C.

P 202-371-6366  
F 202-289-1330  
[teresa.jakubowski@btlaw.com](mailto:teresa.jakubowski@btlaw.com)

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