



## California Moves Outside The Box, Imposes New Criminal Background Check Prohibitions

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“Have you ever been convicted of a crime?” Countless employees have encountered this check-the-box question on employment applications. Over the years, however, several states have introduced “ban the box” laws to restrict the use of such questions and impose barriers to pre-employment screening processes. Expanding upon that activity, 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
  1. an arrest not followed by a conviction, subject to certain exceptions under the Labor Code

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2. referral to or participation in a pre-trial or post-trial diversion program
3. 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.

California employers should consider reviewing their criminal background 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.