

California Expands “Ban the Box”

In January 2018, a new law will be in effect that amends the Fair Employment Housing Act (FEHA) expands current “Ban the Box” provisions to all public and private employers. This means that employers may not:

1. Request an applicant’s criminal conviction history on an employment application
2. Inquire any applicant’s conviction history until issuing a conditional offer of employment
3. Consider or share certain information regarding arrests, participation in diversion programs, or certain enumerated convictions obtained during a criminal background check performed once a conditional offer of employment has been made.

In addition, an employer may not deny employment based “solely or in part” on an applicant’s conviction history, the employer must first:

1. Conduct an assessment to determine whether the applicant’s conviction history has a “direct and adverse relationship with the specific duties” of the job for which the applicant is being considered
2. Give notice to the applicant of a preliminary decision to deny employment based on the conviction history
3. Allow the applicant time to respond to the notice and to provide evidence to dispute the accuracy of the conviction history
4. Consider the evidence submitted by the applicant. If the employer makes a final determination to still deny employment after consideration of the evidence provide by the applicant, the employer must provide the applicant with a written notice of its final decision.

The requirements and procedures of this new law are similar to the Fair Chance Ordinance provisions enacted in the City of Los Angeles earlier this year. Employers in Los Angeles are well prepared for this new law. Others, however, should take this opportunity to scrutinize their hiring procedures and forms and to also train managers on the new provisions. At the same time, employers should also ensure that their job applications do ask for prior salary history and that hiring managers and recruiters do not ask for this information.

Employers must review and update their job application and interview forms and procedures to eliminate any requests for disclosures of criminal conviction histories. Employers should also review and update background check authorization forms and procedures. Employers should also develop or update “adverse action” notifications and procedures.

Expanding of both the “Ban the Box” and the Fair Pay Act in January 2018 mean that employers must review their applications and their hiring procedures to ensure they are in compliance with these laws.

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