

CALIFORNIA'S NEW BAN THE BOX LAW

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Beginning January 1, 2018, Assembly Bill 1008 (AB 1008) will prohibit employers with five or more employees from inquiring about criminal history on an employment application or before making a conditional employment offer, or considering certain types of criminal history. Part of a national “ban the box” trend which includes 29 states and over 150 cities, this state law is similar to Los Angeles’ recent ban the box law.

The new law permits a criminal background check after making a conditional offer of employment. But, before denying employment based on conviction history, the employer must make an individualized assessment of whether the conviction has a direct, adverse relationship to job duties, by considering the nature and gravity of the offense, the time passed since conviction, and the nature of the job sought.

If the employer determines the history disqualifies the applicant, the employer must provide the applicant written notice of the preliminary decision, a copy of the conviction history report, if any, and an explanation of the applicant’s right to respond with evidence challenging the accuracy of the report, evidence of rehabilitation or mitigating circumstances, or both. The employer must provide the applicant five business days within which to respond. The applicant can obtain an additional five days to respond if he or she notifies the employer that the accuracy of the conviction history is disputed and that he or she is taking steps to obtain evidence supporting that assertion.

The employer must consider any information submitted by the applicant in response. If after considering the response, the employer decides against hire, additional written notice is required. The final written denial must provide details on any existing procedure for the employer has for the applicant to challenge the decision or request reconsideration and inform the applicant of his or her right to file a complaint with the Department of Fair Employment and Housing.

This law also prohibits considering an arrest not resulting in a conviction, referral to a diversion program, or certain sealed or removed convictions.

PROFESSIONALS

Kelly O. Scott

PRACTICE AREAS

Employment

The new law does not apply to a position where an employer is required by law to conduct criminal background checks for employment or to restrict employment based on criminal history.

Employers are reminded that recent state regulations also limit the types of criminal history that may be considered, and restrict an employer's consideration of criminal history if doing so would result in an adverse impact on individuals in a protected class. Based on the expanding body of legislation regarding the use of background checks and criminal convictions, employers are cautioned to do so only on advice of legal counsel.

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