



## Criminal Background Checks

California law prohibits all employers with five or more employees from asking about criminal convictions on job applications except:

- Government agencies (required by law to check conviction history)
- Farm Labor Contractors
- Positions where the law requires employers to check criminal history

California employers must not ask about criminal conviction history information on job applications or in interviews until *after* an offer of employment is made.

Once an offer is made, employers *cannot* consider:

- Arrests not resulting in a conviction;
- Referrals to pre-trial/post trial diversion programs;
- Juvenile records;
- Non-felony marijuana convictions that are more than two years old; and
- Convictions that are sealed, dismissed, expunged or removed by statute.

Once an employer is aware of an applicant's conviction history, employment may only be denied if the conviction history has a "direct and adverse relationship with the specific duties of the job" (Ex: driver position and past DUI). Employers must make an *individualized assessment* and consider:

- Nature and gravity of the criminal offense.
- Time that has passed since offense.
- Completion of sentence.
- Nature of job applied for.

If employment is denied, the applicant must be provided with written notification of the preliminary decision that includes:

- The conviction that is the basis for the decision;
- A copy of the conviction history report (if any); and
- An explanation of the applicant's right to respond to the notice within five days and their option to challenge the accuracy of the conviction history

If no information challenging the accuracy of the conviction history is received within five days, then the offer is considered withdrawn. If the decision to deny employment is maintained after receiving additional information from the applicant, a final "Adverse Action Notice" must be provided to the applicant in writing, including an explanation of the applicant's right to file a complaint with the Department of Fair Employment and Housing.

Contact CEA if you need assistance in this process or preparing letters and/or notices to applicants @ 1-800-399-5331 or [CEAinfo@employers.org](mailto:CEAinfo@employers.org).