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# The California Fair Chance Act: Employer Obligations Under the New Law Starting January 1<sup>st</sup>

The [California Fair Chance Act \(AB 1008\)](#) takes effect on January 1, 2018 and requires most employers in California to “ban the box.” Employers that ask job applicants about conviction history will be required to postpone that review until after making a conditional job offer.

## What is the California Fair Chance Act?

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The Fair Chance Act (FCA), also known as “Ban the Box,” is a new California law meant to ensure that workers with conviction records are more fairly considered for jobs. Starting January 1, 2018, most California employers may no longer ask about conviction history on job applications; they must wait until *after they have made a conditional job offer* to a candidate to run a conviction background check.

## When can I ask about an applicant’s conviction record?

Only *after* selecting an applicant and conditionally offering him or her the job can you ask about the applicant’s conviction history (verbally or in writing) or run a background check.

## Does the Fair Chance Act apply to me?

The law applies to almost all employers in California, both private and government employers. There are limited exceptions:

- Employers with less than five employees are not required to comply with the FCA.
- When hiring for *certain positions*, you may not be required to comply. Specifically, if any law requires you to run a background check, the Fair Chance Act does not require you to delay conviction inquiries.

## Why should I comply with this law?

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There are consequences to violating the Fair Chance Act. Job applicants can file a complaint with the California Department of Fair Employment and Housing (DFEH) to report violations. Applicants may then have DFEH investigate their claim, or they may choose to file a lawsuit in court. You may be ordered to compensate job applicants for your violation of their rights and any harm it caused them.

- People with records can also make good employees. [Read more](#) about why many employers are giving qualified people with records a chance and choosing not to artificially restrict their talent pool.

## I offered the job to an applicant. Now what?

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After making a conditional job offer, you may run a conviction background check. If the background check turns up a conviction that raises concerns, you can rescind the job offer only if you follow the procedures described below.

### Can I revoke a job offer after learning of the applicant's conviction record?

Only after you follow certain procedures:

1. Conduct an "individualized assessment" by considering the amount of time since the conviction and whether it is directly and adversely related to the specific job duties;
2. If you still want to revoke the job offer, you must notify the applicant in writing:
  - o identify the conviction(s) that are the problem;
  - o provide a copy of the conviction history report, if you reviewed one;
  - o inform the applicant that he or she may respond with evidence of the record's inaccuracy or of rehabilitation and mitigating circumstances; and
  - o list the deadline for any response from the applicant.
3. You must allow the applicant at least five business days to respond. If the applicant disputes the accuracy of the conviction history report, you must allow him or her five additional days to obtain evidence demonstrating the inaccuracy.
4. After considering the information submitted by the applicant, you may revoke the offer via a written notice (that also describes any procedure available to challenge your decision and informs the applicant of his or her right to file a complaint with the California Department of Fair Employment and Housing.

### What other laws must I follow?

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Other federal, state, and local laws limit your consideration of arrest and conviction records:

- [California law](#) prohibits employers from asking about or considering arrests (except pending charges), juvenile court records, participation in diversion programs, and expunged ("judicially dismissed") convictions at any point during the hiring process.
- State and [federal civil rights laws](#) (and [California regulations](#)) require employers to be careful not to discriminate against people of color when using conviction record screens. To avoid violating these laws, always conduct an "individualized assessment" when considering the conviction record of any applicant or employee.
- [Federal consumer law](#) requires you to get the applicant's written permission before running a conviction background check. ([California law](#) requires it, too.)
- [San Francisco](#) and [Los Angeles](#) have local ban-the-box laws supplementing the FCA.

