



San Francisco joins others to “Ban the Box”

San Francisco has joined other jurisdictions, such as Hawaii, [Massachusetts](#), [Seattle](#) and [Minnesota](#), in passing the “Fair Chance Ordinance” which takes existing public employer regulations regarding “Ban the Box” and applies it to the private sector. You may read the full ordinance [here](#).

Who does this affect?

The law applies to both private and public employers in San Francisco employing twenty or more individuals or any individual acting directly or indirectly in the interest of the employer.

When does this go into effect?

Mayor Edwin Lee signed this into law February 18, 2014. The law goes into effect 30 days after signing and becomes operative in 180 days.

What is included in the law?

This legislation:

- Prohibits employers and housing providers from inquiring if an applicant has ever been convicted of a crime, has any unresolved arrests, or has any pending criminal charges on the application or during the first live interview.
- Even at the point when employers can inquire into criminal history they:
 - Can ask only about misdemeanor and felony convictions that occurred within seven years of the inquiry
 - Should only consider convictions which are related to the job in which the individual is applying;
 - Must provide the individual the right to offer evidence of rehabilitation or other mitigating factors; And
 - Must follow specific adverse action procedures if they would want to take adverse action based on an individual’s criminal history.
- Employers are required to state in job advertisements that they will consider qualified applicants with a criminal history.

Are there exceptions?

There may be exceptions as defined by the Office of Contract Administration. Each employer should evaluate the requirements if they believe an exception may apply to them.

Can employers still consider a candidate’s criminal history?

Yes, as previously noted, employers can inquire into an applicant’s criminal history after the first live interview, however, they can ask only about misdemeanor and felony convictions that occurred within seven years of the inquiry. Furthermore, if an applicant does disclose criminal history, San Francisco employers can consider the information only if it has "a direct and specific negative bearing on [the applicant's] ability to perform the duties or responsibilities necessarily related to the employment position."

Can employers still take adverse action based on considering an individual’s criminal history when making an employment decision?

- If an employer wants to take adverse action based on the individuals conviction history, whether self disclosed or reported in the background report, there are requirements that extend beyond the FCRA:
 - **An employer shall conduct an individualized assessment and consider:**
 - Only job-related convictions
 - The time elapses since the conviction
 - Any evidence of inaccurate information or evidence of rehabilitation and other mitigating factors



- **Provide the individual:**
 - A notice that includes:
 - A copy of their background report
 - The potential adverse action and
 - **The items forming the basis for the potential adverse action**
 - If, **within 7 days** of providing this notice the individual gives the employer
 - (1) evidence that the information is inaccurate or
 - (2) any evidence of rehabilitation or other mitigating factors,the employer is to delay taking any adverse action for a reasonable period of time after receiving such information while they reconsider the potential adverse action
 - If the final decision is to take the adverse action, the employer will provide a final adverse action notice to the individual.

Recommendations

You may want to review, and discuss with your legal counsel, your organization's policies and procedures, including your application if all applications contain a criminal history question, your pre-adverse and adverse action process, as well as your job postings to ensure compliance with the changing laws.

Contact Accurate Background

Click [here](#) for a summary of this this new legislation by Littler Mendelson. For additional questions, please contact Accurate Background at 800.216.8024.