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**California Fair Chance Act Takes Effect January 1, Extending ‘Ban the Box’ to Private Employers**

**Here’s What California Jobseekers and Employers Need to Know**

*Berkeley, CA*. The [California Fair Chance Act](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB1008) (AB 1008), one of the strongest ban-the-box laws in the country, takes effect January 1, 2018. California is the tenth state to require both public- and private-sector employers to delay background checks and inquiries about job applicants’ conviction records until later in the hiring process.

Nearly one in three California adults—disproportionately people of color—have a conviction or arrest record that can show up on an employment background check. The Fair Chance Act will help ensure that these eight million Californians are judged by their qualifications and work experience—not rejected by employers at the start of the hiring process because of a checked box.

Compliance with the new law isn’t complicated, but, if a fair chance to work is to become a reality for the millions of Californians with a record, jobseekers need to know their rights, and employers, their obligations. To that end, the co-sponsors of AB 1008 have jointly issued factsheets to help [workers](http://bit.ly/CAFairChanceWorkers) and [employers](http://bit.ly/CAFairChanceEmployers) understand the new law.

**DOWNLOAD THE FACTSHEETS:**

* [**Know Your Rights as a Jobseeker Under the New ‘Ban the Box’ Law**](http://bit.ly/CAFairChanceWorkers)
* [**Employer Obligations Under the New Law Starting January 1st**](http://bit.ly/CAFairChanceEmployers)

**The Basics About the New Law**

The Fair Chance Act requires most California employers to delay written and verbal inquiries about conviction history and delay any conviction background check until after they have selected a candidate and offered him or her the job.

* Terminology: The technical term for when an employer can run a background check is after a “conditional offer” of employment, which means a job offer pending a background check.
* Exceptions: Employers with less than five employees (and law enforcement employers) are not required to comply with the new law. In addition, the Fair Chance Act does not require an employer to delay conviction inquiries when filling a positionfor which the law *requires* the employer to run a background check.

**The Background Check Process**

After a conditional offer, the employer can ask about the applicant’s conviction history and run a conviction background check. In order to revoke the job offer, the employer must follow certain steps:

1. Consider the nature and age of any conviction and whether it’s directly related to the job duties;
2. Notify the applicant in writing of the employer’s intent to revoke the job offer (attaching a copy of the conviction background check report) and allow the applicant at least five business days to respond;
3. Review any response from the applicant and again notify the applicant in writing if the employer ultimately decides not to hire him or her.

**How to Report Violations**

Job applicants can file a complaint with the California Department of Fair Employment and Housing (DFEH) if they believe their Fair Chance Act rights were violated by an employer. DFEH will then investigate the complaint or the applicant may elect to file a lawsuit in court. The employer may be ordered to change its behavior and compensate the applicant for violating his or her rights. There are a few ways to file a complaint:

1. File a complaint online at [https://ccrs.dfeh.ca.gov](https://ccrs.dfeh.ca.gov/)
2. Download an [intake form](https://www.dfeh.ca.gov/filing-a-complaint-by-mail/) and either email it to contact.center@dfeh.ca.gov or mail it to 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758
3. Visit a [DFEH office](https://www.dfeh.ca.gov/contact-us/office-locations/)

For more information, call DFEH at 800-884-1684.

**Other Laws Employers and Applicants Should Know About**

* [Federal consumer law](https://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm) requires employers to get the applicant’s written permission before running a conviction background check. ([California law](https://www.privacyrights.org/consumer-guides/employment-background-checks-california-focus-accuracy#background checks ca) requires this, too.)
* [California law](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=432.7.&lawCode=LAB) prohibits employers from considering arrests (except pending charges), juvenile court records, participation in diversion programs, and expunged (“judicially dismissed”) convictions at any time during the hiring process.
* State and [federal civil rights laws](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm) (and California [regulations](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2017/06/FinalText-CriminalHistoryEmployDecRegulations.pdf)) also prohibit employers from using conviction record screens in a way that disproportionately affects people of color and isn’t justified by “business necessity.” An employer can satisfy that standard by showing that its exclusion policy was tailored and it conducted an “individual assessment” by considering at least the age and nature of the conviction and the nature of the job.
* [San Francisco](http://sfgov.org/olse/fair-chance-ordinance-fco) and [Los Angeles](http://bca.lacity.org/fair-chance) have local ban-the-box laws that supplement the new state law.[[1]](#footnote-1)

Other large and small employers have voluntarily banned the box, including Oakland-based [Give Something Back Workplace Solutions](https://givesomethingback.com/). “We’ve hired many people with conviction records over the years, but our clients and employees remain safe, our hiring process is still efficient, and our business continues to be profitable,” says the company’s president Mike Hannigan.

Fair chance reforms allow people with records to get a foot in the door and have been shown to increase the number of people with records interviewed and hired. And [research demonstrates](http://www.nelp.org/publication/research-supports-fair-chance-policies/) that employing people with records benefits us all by improving the economy and decreasing recidivism.

“The new law means a fair chance at employment and the opportunity to become a productive member of society,” says **Kim Carter, executive director of Time for Change Foundation**. “I’ve seen the devastation that often follows when people are denied employment because of a past conviction: extreme poverty, homelessness, and the inability to provide for their children. It’s demoralizing.”

“AB 1008 gives us a chance to be considered for a job,” says **Sandra Johnson, a member of All of Us or None and a policy fellow with Legal Services for Prisoners with Children**. “It ensures that a past conviction isn’t the first (and often only) thing an employer sees. I am a person. I am a human being. Like all formerly incarcerated people, I deserve a chance to make a living, to support myself and my family, to be a contributing member of my community and an asset to society.”

“Around the country, policymakers and the public are realizing the need to address the effects of mass incarceration,” says **Beth Avery, staff attorney with the National Employment Law Project**. “Thanks to grassroots organizing by directly impacted people and support from dedicated advocates, 30 states and over 150 cities and counties have banned the box in some form. And nearly one in three U.S. residents now live in a state or locality that extends its fair chance law to private-sector employment."​

AB 1008 was co-sponsored by the [National Employment Law Project](http://www.nelp.org/campaign/ensuring-fair-chance-to-work/), [Legal Services for Prisoners with Children](http://www.prisonerswithchildren.org/), [All of Us or None](http://www.prisonerswithchildren.org/our-projects/allofus-or-none/), and [Time for Change Foundation](http://www.timeforchangefoundation.org/). The bill’s primary co-author was Assemblymember Kevin McCarty (D-Sacramento).

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*The National Employment Law Project (NELP) is a non-partisan, not-for-profit organization that conducts research and advocates on issues affecting low-wage and unemployed workers. For more about NELP, visit* [*www.nelp.org*](http://www.nelp.org)*.*

*Legal Services for Prisoners with Children (LSPC) organizes communities impacted by the criminal justice system and advocates to release incarcerated people, to restore human and civil rights, and to reunify families and communities. Visit* [*www.prisonerswithchildren.org*](http://www.prisonerswithchildren.org/) *for more information.*

*All of Us or None (AOUON) is a grassroots civil and human rights organization fighting for the rights of formerly—and currently—incarcerated people and our families. AOUON began the Ban the Box campaign in 2003.*

*Time for Change Foundation’s mission is to empower disenfranchised low-income individuals and families by building leadership through evidence-based programs and housing to create self-sufficiency and thriving communities. T*o learn more about TFCF, visit [*www.TimeForChangeFoundation.org*](http://www.TimeForChangeFoundation.org).

1. San Francisco and Los Angeles enacted local private-sector ban-the-box ordinances in 2014 and 2016, respectively. San Francisco’s enforcement agency surveys thousands of employers each year and observes overwhelming compliance (at a rate of over 80%) that continues to rise, with smaller employers leading the way (almost 90% compliance). [↑](#footnote-ref-1)