

California Workers with Criminal Records: Know Your Employment Rights Dismissals and Employment

Most employers in California cannot ask workers about expunged convictions. Specifically, most employers may not ask job applicants about:

...any conviction for which the record has been judicially ordered sealed, expunged, or statutorily eradicated . . . ; [or] any misdemeanor conviction for which probation has been successfully completed or otherwise discharged and the case has been judicially dismissed pursuant to Penal Code Section 1203.4.

2 Calif. Code of Regulations § 7287.4(d)(1)(B)

Q. What does a dismissal under 1203.4 or 1203.4a mean?

A. In California, an expungement is a court ordered dismissal of a previous conviction.

A 1203.4 / 1203.4a dismissal withdraws a previous verdict or plea of guilt or *nolo contendere*. The court then dismisses the charges against the person, and the person "shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she was convicted."

Q. What does expungement mean for employment purposes?

A. Once a person has been granted a dismissal / expungement, most employers may not seek information concerning the dismissal or previous conviction, as stated in the regulation above. Most private employers may not ask about the previous conviction or the dismissal, and you may truthfully state that you do not have a conviction.

Exceptions: Applications for public office, for professional licensing by state or local agencies, or for contracting with the California State Lottery may require you to disclose dismissed convictions. Additionally, some types of employers such as law enforcement, health facilities and public employers have access to your complete record, including dismissed convictions.

Q. Will an employer think I lied on the application if I say I do not have a conviction but they see a 1203.4 / 1203.4a dismissal on my background check?

A. If you were applying for a job with a private employer, you likely did not lie on your application. If there is not a specific law granting the employer the right to consider dismissed convictions, the employer may be violating state law by requesting information or considering a dismissed conviction.

The Equal Employment Opportunity Commission (EEOC) is the federal agency that investigates charges of employment discrimination. Information is available at www.eeoc.gov.

If you believe you faced employment discrimination because an employer improperly considered a dismissed conviction, you may contact the National Employment Law Project at (510) 409-2427 for information regarding the EEOC complaint process.

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This fact sheet provides general information regarding California Penal Code section 1203.4 / 1203.4a dismissals and is not specifically written to apply to your individual situation. By providing this general information, NELP is not providing legal advice nor creating an attorney-client relationship. NELP shall not be liable for the information provided herein, nor for the results obtained from the use of such information.

* This is not a complete list. For more information please see Penal Code § 11105 and Labor Code § 432.7.