



CALIFORNIA “BAN THE BOX” RESOURCE GUIDE:
MODEL POLICIES TO MEET THE NEW LAW’S
JULY 1, 2014 IMPLEMENTATION DEADLINE

A new state law ([AB 218](#)) requires that by July 1, 2014, the State of California, as well as every city, county and special district in the state, have a “ban the box” policy in place so that questions about conviction history do not appear on the government’s initial job applications. Any inquiries into conviction history must take place later in the hiring process. The new statute—section [432.9](#) in the Labor Code—ensures that job applicants are considered on their qualifications first.

On October 10, 2013, Governor Brown signed AB 218 (authored by Assemblymember Roger Dickinson). This law will help increase employment opportunities for thousands of Californians who have the job qualifications but find themselves shut out from work because of unfair hiring barriers. AB 218 gives all Californians a fair opportunity to compete for good jobs while promoting safer and more productive workplaces and communities.

This guide provides the resources necessary to implement the new law and to expand economic opportunities in local communities. The guide describes the basics of the law, highlights ban-the-box best practices, and compiles endorsements from leading voices across the state.

CONTENTS

How to Implement AB 218, California Labor Code Section 432.9.....2

Best Practices to Maximize Public Safety and Economic Stability3

Model Administrative Memo in California ([Word version](#))4

Model Ordinance for California ([Word version](#))6

Voices in Support of Removing Barriers for People with Convictions.....8

HOW TO IMPLEMENT AB 218, CALIFORNIA LABOR CODE SECTION 432.9

What does California Labor Code Section 432.9 require?

- (1) Any inquiry about convictions on an employment application, whether written or on-line, must be removed. Under existing law, [Labor Code Section 432.7](#), the employer is already prohibited from inquiring into arrests, into convictions that have been dismissed, or into records relating to successful participation in a diversion program.
- (2) The employer must delay any inquiry into convictions until after the employer has determined the applicant meets the minimum employment qualifications, as stated in the notice for the position. The Section does not apply outside of employment or to licensing. Relevant text: [Section 432.9 \(a\)](#).

Who is covered by Section 432.9?

State agencies, cities, counties, including chartered cities and counties, and special districts. Private employers are not included. Relevant text: [Section 432.9 \(d\) and \(e\)](#).

What are the steps to comply with Section 432.9?

To maximize compliance, the employer should:

- (1) Remove any conviction inquiry from written applications or online applications. To save on costs, one city applied stickers to existing written applications to block out the question and revised the application for future printings.
- (2) Adjust the hiring policy to delay conviction histories to, at least, after an applicant's minimum employment qualifications are reviewed. One county found that waiting to inquire into an applicant's conviction history until a conditional offer had been made was the most cost-effective process. The law does not prevent any agency from delaying inquiry until later in the hiring process.

When does Section 432.9 go into effect?

This section will become operative on July 1, 2014 as stated in [Section 432.9 \(g\)](#).

What are other related laws?

Besides Labor Code 432.7, the California Investigative Consumer Reporting Agencies Act (ICRAA), [California Civil Code Sections 1786 et seq.](#), the Fair Credit Reporting Act (FCRA), [15 U.S. Code Sections 1681 et seq.](#), and the [EEOC Guidance](#) on Title VII of the Civil Rights Act of 1964 outline employer obligations related to criminal records and background checks. Also, [California Penal Code section 11105](#) requires that a copy of the state Criminal Offender Record Information be provided to the denied applicant. See [Model Administrative Memo](#) of this guide outlining the existing law.

What more can be done to maximize the effectiveness of Section 432.9?

We recommend considering some of the best practices outlined in the next section of this guide.

BEST PRACTICES TO MAXIMIZE PUBLIC SAFETY AND ECONOMIC STABILITY

Include a presumption of rehabilitation. Once a person has completed a sentence, do not consider the conviction in hiring, unless a position involves, for example, unsupervised access to children.

A background check may be unnecessary for a job position because most jobs do not involve unsupervised access to sensitive populations or handling sensitive information.

If a background check is necessary, only consider those convictions with a direct relationship to job responsibilities. Follow state law by avoiding consideration of arrests or dismissed convictions. Avoid consideration of old records that no longer predict the likelihood of committing an offense

Include a non-discrimination statement on job applications protecting “people with convictions” or “formerly incarcerated people.” Avoid stigmatizing language such as “ex-offenders” or “ex-felons.”

Remove inquiries into conviction history from the initial application, or from the hiring process. Delay all inquiries, oral or written, until after a conditional offer of employment.

Centralize reviewing conviction history information, both to limit the number of people with access to confidential information and with fewer reviewers, a higher degree of staff training can be assured.

Adopt clear standards for evaluating past convictions. Avoid criteria language such as “nature and gravity of the offense” or “frequency” of convictions, because it invites subjectivity and prejudice.

List any legal barriers that exist for people with past convictions in announcements for job openings. In addition, if a background check is required, inform applicants on the job announcement.

Remove self-reporting questions about conviction history. Discrepancies between self-disclosed information and background checks are often caused by misunderstandings, and fail as “truth tests.”

If a job applicant is rejected because of a past conviction, provide the applicant with written notice of the specific conviction that is considered job-related and how it is related to the job responsibilities.

Provide the applicant with a copy of the results of any background check. Background check reports are often inaccurate, so give applicants the chance to verify or challenge the reported information.

Provide the applicant the right and sufficient time to submit evidence of rehabilitation when a record is considered in hiring. Evidence may include letters of recommendations from community members and certificates from programs or education. Hold the position open until the review is complete.

Include effective enforcement, which at a minimum should include an agency that has the infrastructure to process complaints and to audit compliance. If the policy applies to private employers, the ability to bring a lawsuit based on a violation of the ordinance may be an effective means to enforce.

MODEL ADMINISTRATIVE MEMO IN CALIFORNIA

The following memo could be adopted administratively. It is based on the administrative policies of Oakland, adopted by the City Manager in 2010, and of Compton, effective in 2011 after the City Council passed a resolution.

Policy

The City will not conduct criminal background checks on applicants unless it is required by law or the City has made a good faith determination that the relevant position is of such sensitivity that a background check is warranted. Applicants will be considered for employment opportunities with the City on the merits of their skills and experience related to the position for which they are applying. If the City has determined that a criminal background check is warranted for the position, the background check will be conducted after the appointing authority has selected the best candidate for the position. If a background check yields information that is of concern to the City, the applicant will be provided an individualized assessment and given an opportunity to review the findings and present information regarding inaccuracy and rehabilitation.

Definitions

“Applicant” means a person who has filed an application for examination to a City job position.

“Appointing Authority” means any official or group of officials having authority to make appointments to or cause a removal from a position in the City.

“City” means the City, department, agency, or office thereof.

“Job-related conviction” means any conviction substantially related to the duties and responsibilities of that position.

Existing Law

The City will comply with state and federal law requiring background checks for certain positions and dictating certain disqualifying offenses and other existing law. Under the California Labor Code, employers are prohibited from asking job applicants about any arrest that did not result in a conviction or dismissed convictions, with some explicit statutory exceptions. (Sec. 432.7). In addition, state and local agencies cannot inquire about convictions until an applicant has been determined to meet the minimum job qualifications, with some exceptions. (Cal. Labor Code Sec. 432.9).

An employer’s use of an individual’s criminal history in making employment decisions to automatically disqualify applicants may violate the prohibition against employment discrimination under federal law, Title VII of the Civil Rights Act of 1964. The U.S. Equal Employment Opportunity Commission (“EEOC”) Guidance recommends employers adopt the following best practices to avoid violating federal law. The employer should only consider job-related convictions and should consider time since the conviction. In addition, the guidelines recommend that the employer perform an individualized assessment on the applicant, which would allow the applicant to demonstrate that the criminal history is inaccurate or provide evidence of mitigating circumstances or of rehabilitation.

The federal Fair Credit Reporting Act, 15 U.S. Code Sec. 1681, et seq., and California's Investigative Consumer Reporting Agencies Act, Cal. Civil Code Sec. 1786 et seq., collectively govern the use of commercially-prepared background reports. These reports should not include information on convictions older than seven years and the applicant should be provided a copy of the report prior to any adverse action. Also, Cal. Penal Code Sec. 11105(t) requires that a copy of the state Criminal Offender Record Information be provided expeditiously to the denied applicant.

Procedure

1. **Identifying position as requiring background check.** Human Resources analyst performs initial review of position to determine if the position is of such sensitivity that a background check is warranted or that a background check is required by law.
2. **Posting job announcements.** All recruitment information, announcements, and position descriptions will contain the following statement if the position requires a background check, unless otherwise required by law: *"This position is subject to a background check for any convictions directly related to its responsibilities and requirements. Only job-related convictions will be considered, and will not automatically disqualify the final candidate."*
3. **Examination process.** A list of eligible Applicants will be created based on examination results and the list will be sent to the hiring department. The hiring department will conduct interview(s) and select an individual from the list of eligible applicants. Once an individual has been selected, the hiring department will notify Human Resources (HR), and HR will send the individual a conditional offer letter and a request for authorization to conduct a background check, if so required.
4. **Background check report review.** (1) If required, HR will consider job-related convictions and the time that has passed since the conviction and will keep the information confidential. If an Applicant's background check contains information that may be the basis for an adverse action, HR will: (a) notify the Applicant of the potential adverse action and rights under this policy; (b) identify the conviction item(s) that would be the basis for the adverse action and provide a copy of the report, if any; (c) provide examples of mitigating or rehabilitation evidence; and (d) provide the Applicant ten (10) business days, after receipt of the notice to respond with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation and rehabilitation evidence.

(2) HR will hold the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the Applicant and the factors recommended by the EEOC. If HR makes an adverse decision, the Applicant shall be informed of the final decision and that he or she may be eligible for other City positions.
5. **Appeal.** Applicants may appeal the final decision to the Director of Human Resources.

MODEL ORDINANCE FOR CALIFORNIA

[ADD FINDINGS; FOR EXAMPLES, SEE [RICHMOND, CA](#) AND [NEW HAVEN, CT](#) ORDINANCES]

Definitions

"Applicant" means any person considered for, or who requests to be considered for, employment or any employee considered for, or who requests to be considered for, another employment position, by the Employer.

"Awarding Authority" means any department, agency, or office of the City that authorizes a Vendor to perform requested goods and/or services.

"City" means the City, department, agency, or office thereof.

"Employment" means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay.

"Job-related conviction" means any conviction substantially related to the duties and responsibilities of that position.

"Vendor" means any vendor, contractor, or supplier of goods and/or services to the City.

"Employer" means the City; [IF APPLYING TO PRIVATE EMPLOYERS, THEN INCLUDE:] any person regularly employing five or more persons; any person acting as an agent of an employer, directly or indirectly; or any person undertaking for compensation to procure employees or opportunities for employment.

Existing Law [INCLUDE DESCRIPTION AS DESCRIBED IN [ADMINISTRATIVE MEMO EXAMPLE](#)]

Prohibition Against Unfair Discrimination Against Persons Previously Convicted

- (1) **Identifying position as requiring background check.** The Employer will not conduct background checks on Applicants unless it is required by law or the Employer has made a good faith determination that the relevant position is of such sensitivity that a background check is warranted.
- (2) **Conviction history inquiry.** The Employer shall not inquire into an Applicant's conviction history until after the Applicant has received a conditional offer. Job applications shall not inquire into an Applicant's conviction history.
- (3) **Notice of rights.** Prior to a conviction history check, the Employer will send the Applicant a conditional offer letter and a request for authorization to conduct a background check (if so required), and notice of the Applicant's rights under this law.
- (4) **Screening.** If the Employer is considering conviction history of the Applicant, the Employer will consider job-related convictions and the time that has passed since the conviction.
- (5) **Pre-adverse action notice.** If an Applicant's conviction history contains information that may be the basis for an adverse action, the Employer will: (a) notify the Applicant of the potential adverse action; (b) identify the conviction item(s) that are the basis for the adverse action; (c) provide a copy of the report, if any; and (d) provide examples of mitigation and rehabilitation evidence.

- (6) **Individualized assessment.** The Applicant shall have ten (10) business days, after receipt of the notice to respond to the Employer with any information rebutting the basis for the adverse action, including challenging the accuracy of the information and submitting mitigation and rehabilitation evidence. The Employer will keep the position open until it makes the final employment decision based on an individualized assessment of the information submitted by the Applicant and the factors recommended by the EEOC.
- (7) **Final notice.** If the Employer makes an adverse decision, the Applicant shall be informed of the final decision and that he or she may be eligible for other positions.
- (8) **Appeal.** If denied employment by the Employer, Applicants may appeal adverse decisions to the Enforcement Agency.
- (9) **Confidentiality.** Any information pertaining to an Applicant's or employee's criminal record history obtained in conjunction with the hiring process shall remain confidential, and shall not be used, distributed or disseminated by the Employer or any of its agencies, or its vendors, to any other entity, except as required by law.

Vendors. [CONSIDER COMBINING WITH [TARGETED HIRING](#)]

- (1) The City will do business only with Vendors that have adopted and employ conviction history policies, practices, and standards that are consistent with City standards outlined in this chapter.
- (2) During the bid or contracting process, the Awarding Authority shall review all Vendors' conviction history policies for consistency with City standards. The Vendors' conviction history standards will be part of the criteria to be evaluated by the City as to whether to award a City contract. Further, the City will be able to evaluate a Vendor's execution of the conviction history standards as a part of the performance criteria of said City contract(s). The Awarding Authority shall consider any Vendor's deviation from these conviction history standards as grounds for fines or rejection, rescission, revocation, or any other termination of the contract, or debarment from all City contracts.

Compliance. The Employer will keep all documents related to the denial of employment of any Applicant based on the background check, including but not limited to communication with the Applicant. Any person who is aggrieved by an Employer's violation of these provisions may contact the Enforcement Agency to report any problems, concerns or suggestions regarding the implementation, compliance and impact of these sections, and the Agency shall keep a record. In addition, the Agency shall conduct periodic reviews to assess compliance with these sections. The Agency shall investigate and review complaints. The Agency shall report quarterly on complaints, investigations, and reviews.

[IF APPLYING TO PRIVATE EMPLOYERS, THEN INCLUDE:] The Enforcement Agency may issue a fine of up to \$500 for a first violation and provide counseling to the Employer to ensure future compliance. Subsequent violations are subject to fines of up to \$1000. In addition, an individual may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this chapter, and upon prevailing, will be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to damages, injunctive relief, and reasonable attorney's fees and costs.

VOICES IN SUPPORT OF REMOVING BARRIERS FOR PEOPLE WITH CONVICTIONS

[Nine states other](#) than California have adopted similar policies to AB 218, Labor Code Section 432.9, including four other states just in the past year, along with [over 55 cities and counties](#) across the U.S. It's a reform whose time has come in California, as has been reinforced by the diverse voices that strongly endorsed the policy.

The New York Times, "A Second Chance in California," Oct. 4, 2013

"This measure . . . help[s] remove unfair barriers to employment that keep millions of qualified workers trapped at the margins of society."

The Los Angeles Times, "To Help Ex-Cons, Ban the Box," July 3, 2013

"The most telling predictor of whether an ex-offender will reenter the community as a law-abiding and productive member, or whether instead he or she will return to jail or prison, is employment. Former inmates with steady jobs have fairly high success rates. For those who can't find work, prospects are dismal."

Mayor Eric Garcetti, Los Angeles

"As we have done in Los Angeles, this bill will allow people with a conviction history get a foot in the door without compromising safety and security." (Letter for AB 218, Aug. 8, 2013)

Mayor Edwin M. Lee, San Francisco

"We know from our own experience that allowing people with a conviction history to compete fairly for employment will not compromise safety and security in the workplace. Indeed, it can reduce recidivism and promote public safety." (Letter for AB 218, July 17, 2013)

Father Gregory Boyle (Founder and Executive Director of Homeboy Industries) and Reverend Joseph Clopton (Sacramento Area Congregations Together)

"It's not just about fairness for people with criminal records – [this policy is] also good for California's economy and for the safety of our communities to ensure we're maximizing job opportunities for everyone." (Oped, "Fair Hiring Policy Gets an Unfair Rap," *Sacramento Bee*, Sept. 10, 2013)

Chief of Police Chris Magnus, City of Richmond

"[This policy] will help reduce recidivism and provide members of the Richmond community and other residents of California the opportunity to compete for jobs." (Letter for AB 218, March 4, 2013)

District Attorney George Gascón, City and County of San Francisco

"Public sector employers in California have a special obligation to pave the way for the private sector to reduce barriers to employment of people with criminal records." (Letter for AB 218, March 22, 2013)