

California Workers with Criminal Records: Complete Guide to Employment Rights and Remedies

Were you denied employment based on your criminal record? Many employers will not employ anyone who has a criminal record. For most employers that policy is illegal. Find out why in the factsheet attached, **California Workers with Criminal Records**.

If an employer seems to have acted unlawfully, then an individual may file an employment discrimination complaint. Find out how to file a complaint with the federal agency the U.S. Equal Employment Opportunity Commission (EEOC), in the factsheet attached, **Information on Filing a Charge of Discrimination with the EEOC**. Find out how the EEOC handles discrimination complaints in the factsheet attached, **How Does the EEOC Handle Discrimination Complaints?**

One option for some people with criminal records is to seek a dismissal or expungement. If a court orders a dismissal, most employers may not seek information concerning the dismissal or previous condition. Find out more information in the factsheet attached, **Dismissals and Employment**. There are some local legal services that will provide you with free legal advice and may help you seek a dismissal. In San Francisco City and County, see [San Francisco Public Defender](#). In Alameda County, see [East Bay Community Law Center](#). To identify a local legal service: <http://www.lsc.gov/find-legal-aid>

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Disclaimer


No legal advice is being given and no attorney-client relationship is created by the use of these materials. An attorney should be consulted for more detailed information in individual cases. The National Employment Law Project (NELP) shall not be liable for the information provided herein, or for the results obtained from the use of such information.

CALIFORNIA WORKERS WITH CRIMINAL RECORDS

Know Your Employment Rights

Were You Denied Employment Based on Your Criminal Record?

Many employers will not employ anyone who has a criminal record. For most employers, that policy is illegal.

 Were you turned down for a job based on your criminal history?

The National Employment Law Project (NELP) may be able to assist you in filing a claim of discrimination.

Call (510) 409-2427

Rejecting all workers with convictions has a discriminatory effect on African Americans and Latinos, who are arrested and convicted disproportionately to their representation in the population.

Employers must make individualized employment decisions using only considerations that are job-related. That means most employers must consider:

- the nature of the conviction(s)
- the requirements of the job, and
- the time that has passed since the conviction(s).

If the conviction is not related to the job requirements, and / or significant time has passed, then the employer should not consider the conviction in making employment decisions.

The Equal Employment Opportunity Commission (EEOC) is the federal agency that investigates charges of employment discrimination. Workers must file a charge with the EEOC before they can sue a company in court for discrimination.

Employment Criminal Background Checks

Laws protect workers from inaccurate and unfair background checks

Many companies sell background information about workers and applicants to employers. Often employers use those reports to deny someone a job.

- **Accurate Information**

Laws require that companies provide accurate information. To help make sure information is correct, laws require employers to give employees a copy of their background check report. That gives workers a chance to correct any mistakes. The employer must provide information about who to contact to correct any inaccuracies.

- **Clear, not misleading information**

Companies should not report the same conviction multiple times.

- **In California, no convictions more than seven years old and no arrests**

Companies in California should not report (1) any conviction that is more than seven years old, or (2) any arrest (unless it is a recent one waiting a decision regarding prosecution).

If a background check company seems to have acted unlawfully, then an employee can file a claim in court. NELP may be able to help refer workers for assistance.

CALIFORNIA WORKERS WITH CRIMINAL RECORDS

Know Your Employment Rights

To learn more about your employment rights relating to your criminal history, contact NELP.

NELP

National Employment Law Project

Call NELP at (510) 409-2427

- If an employer has unlawfully discriminated against you based on your criminal history, or
- You have been the subject of an illegal background report that has affected your employment, or
- To schedule a presentation regarding employment rights and criminal histories.

In order to preserve your rights, you must file a charge within 300 days of the discriminatory act. (The state agency deadline is one year.)

In limited cases in the San Francisco Bay Area, NELP assists individuals in filing employment discrimination claims with the EEOC.

Phone: (510) 409-2427

Considerations When Filing Out Job Applications

Employers can reject job applicants and fire workers who do not accurately report their conviction history on a job application. It is not illegal for an employer to reject or fire a worker for dishonesty in the application. Further, workers may be disqualified from collecting unemployment benefits if they were fired for dishonesty.

California law prohibits most employers from asking about arrests that did not lead to conviction and convictions that have been "expunged" (dismissed pursuant to PC 1203.4).

Read the questions on the application carefully. Provide only the information requested. Every application is different; some ask only about felony convictions, others ask only about recent convictions.

Regarding licenses or certification for jobs regulated by the state: the law allows state licensing and regulatory agencies to consider a worker's complete criminal history, including arrests and expunged convictions. These jobs include private security guards, school employees, health care workers, and other work with special populations including children, the sick, or elderly.

The National Employment Law Project (NELP) is a non-profit organization. NELP's Second Chance Labor Project specializes in the employment rights of people with criminal records, and works to eliminate unfair barriers to employment.

NELP has prepared materials on various topics, including how to file an employment discrimination claim. Contact NELP to learn more about NELP's presentations to groups regarding the employment rights of people with criminal records.

California Workers with Criminal Records: Know Your Employment Rights Information on Filing a Charge of Discrimination with the EEOC

Many employers have a policy of not employing anyone who has a criminal record. For most employers, such a policy is illegal. That is because such a policy has a discriminatory effect on African Americans and Latinos, who are arrested and convicted disproportionately to their representation in the population.

In making employment decisions regarding people with convictions, most employers must consider the nature of the conviction(s), the requirements of the job and the time that has passed since the conviction(s) before using conviction history as a reason for denying someone a job.

If an employer seems to have acted unlawfully, then an employee can file an employment discrimination complaint. The following is information regarding how to do so.

Q. I think an employer discriminated against me because of my conviction. What can I do?

- A.** It is illegal for an employer to take action against a job applicant or employee based on race, national origin, or certain other categories. (The categories are listed at www.eeoc.gov.)

If an employer took actions that have the **effect** of discriminating against you because of your race or national origin, you can file a complaint (called a “charge”) with the Equal Employment Opportunity Commission (EEOC). By using your conviction history to deny you a job, an employer may be **in effect** discriminating based on race or national origin.

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Q. What is the EEOC?

- A.** It is a federal government agency that enforces employment discrimination laws and investigates complaints of unlawful employment discrimination.

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Q. Can I go right to court and skip the EEOC?

- A.** The law says before you go to court, you must file a charge of discrimination with the EEOC or with a state agency (in California, the state agency is the Department of Fair Employment and Housing (DFEH)). Once you file, you can then request a Notice of Right to Sue and go to court.

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Q. Are there time limits to file a charge?

- A.** Yes. In California, you must file a charge with the EEOC within 300 days of the employment action you are challenging. Other states may have a 180-day limit. (The DFEH has a 1-year time limit.)

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Q. Can the EEOC investigate all employers?

- A.** It can investigate almost all employers that have 15 or more employees. (DFEH can investigate employers with 5 or more employees.)

Some employers have specific rules that allow them more leeway in considering convictions. The main categories of employers that can place greater weight on convictions in making job decisions are: law enforcement; health facilities (relating to drug convictions); and employers working with children, the disabled or elderly.

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Q. Do the employment discrimination laws apply to groups that refer people to jobs in addition to employers who hire people directly?

A. Yes. These laws apply to employment and staffing agencies, unions, and other placement organizations. Like employers, these groups cannot make job placements or referrals using illegal consideration of people's convictions.

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Q. What information do I need to give the EEOC in order to file a charge?

A. The EEOC asks for:

- Your name, address and phone number
- The employer's name, address and phone number
- The (approximate) number of employees
- A short description of the events that you believe violated your rights
- The date(s) of the violation(s)

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Q. What if I don't want anyone to know that I filed a charge?

A. An individual, organization or agency may file a charge on your behalf to protect your identity. However, at some point during the investigation it may become clear who was involved.

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Q. Where do I get an EEOC charge form?

A. You first fill out a questionnaire. You can get a questionnaire from any EEOC office or fill out an EEOC Assessment online at <https://egov.eeoc.gov/eas> or by calling (800) 669-4000. Once you fill it out, you can mail or deliver the questionnaire to any EEOC office.

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Q. Can I get help filling out the questionnaire?

A. The EEOC will help you. If you need help in a language other than English, the EEOC will provide an interpreter service to assist you. If you have a disability and need an accommodation, the EEOC will make appropriate arrangements.

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Q. Where are EEOC offices?

A. There are 51 EEOC offices in the country. Any EEOC office should be able to help you. To find the closest office, call or look online at www.eeoc.gov.

Phone for all offices: (800) 669-4000

TTY for all offices: (800) 669-6820

Oakland EEOC Office
1301 Clay Street, Suite 1170N
Oakland, CA 94612-5217
(510) 637-3235 (fax)

San Francisco EEOC Office
350 The Embarcadero, Suite 500
San Francisco, CA 94105-1260
(415) 625-5609 (fax)

This fact sheet provides general information regarding filing a charge of discrimination with the EEOC and is not specifically written to apply to your individual situation.

Please consult an attorney or the appropriate agency about your rights in your individual situation.

By making this information available, 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.

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National Employment Law Project

NELP Title VII Hotline: (510) 409-2427

www.nelp.org

California Workers with Criminal Records: Know Your Employment Rights How Does the EEOC Handle Discrimination Complaints?

The EEOC case starts when you file a complaint (called a “charge”). In the charge, you explain what workplace discrimination took place.

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Next, the EEOC gives a copy of the charge to the employer.

- If the EEOC thinks the parties might be able to settle the claim, the EEOC will suggest **mediation**. A mediator is a person who helps the parties try to resolve the problem informally. Everything about the mediation is confidential. It is also free.
- If mediation is unsuccessful, or if the parties don't try to mediate, the EEOC assigns the charge to an investigator and asks the employer to respond. When the employer responds, the EEOC investigator reviews your charge and the employer's response.
- The EEOC investigator might request additional information, interview people, read documents, visit the workplace, or take other steps to investigate the charge of discrimination.

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After investigation, the EEOC issues a decision. It will conclude either:

1. There is **NO CAUSE** (meaning, no reason that the EEOC found) to believe that unlawful discrimination occurred, or
2. There is **REASONABLE CAUSE** (meaning, a good reason) to believe that unlawful discrimination occurred.

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*If the EEOC find **NO CAUSE** to believe that unlawful discrimination occurred, then the EEOC gives you a “**Right to Sue**” notice. You then have 90 days to file a lawsuit in court. If you wait more than 90 days, it likely will be too late to sue the employer for unlawful discrimination and the case is over.*

*If the EEOC finds **REASONABLE CAUSE** to believe that unlawful discrimination occurred, then the EEOC will schedule a **conciliation**. This is an attempt to resolve the case without filing a lawsuit.*

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- If the conciliation is successful, the case ends, usually with the employer agreeing to compensate you for its unlawful actions.
- If the conciliation is unsuccessful, the EEOC will sometimes decide to file a lawsuit against the employer. If the EEOC does not sue, it will give you a “**Right to Sue**” notice. You then have 90 days to file a lawsuit in court.

This fact sheet provides general information regarding filing a charge of discrimination with the EEOC and is not specifically written to apply to your individual situation.

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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.”

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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.*

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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.