



## UNDERSTANDING THE LAW

### TOP TEN EMPLOYER BEST PRACTICES

#### *When Using Criminal Background Checks for Employment*

Review your criminal background check policy for hiring. Develop a written hiring policy consistent with state labor law and federal employment law (*Title VII*) and consumer protection laws (*federal Fair Credit Reporting Act* and *California Investigative Consumer Reporting Agencies Act*). Here are key best practices:

1. **Avoid a hiring practice that completely excludes people with criminal records from working at your business.** Don't advertise that "no felons should apply" or that job applicants "must pass a background check" or "have a clean record." This could be interpreted as a hiring ban in violation of federal law.
2. **Don't consider arrest records not followed by a valid conviction or sealed, dismissed, or expunged convictions.** As a best practice, don't consider infractions or misdemeanors.
3. **As a best practice, take the question about convictions off the job application and delay inquiries in the hiring process** so that people can show they're qualified for the job without the stigma of the conviction.
4. **If you ask about convictions, don't ask for an applicant's entire criminal record.** Instead, limit your inquiries to only job-related convictions within a recent window of time. Narrow down your inquiries to convictions that would actually impair the person from performing the specific job duties.
5. **A background check may be unnecessary for a job position.** If the background check is not legally required, save costs by foregoing it for non-sensitive job positions.
6. **If a background check is necessary for the position, only consider convictions with a direct relationship to job duties and responsibilities, and take into account the length of time since the offense or other mitigating factors.** If the conviction was for something unrelated to the position's responsibilities, or happened a long ago, likely it won't impact the applicant's ability to perform the job.
7. **If a job applicant is rejected because of a background check report, provide the applicant a copy of the report and a summary of consumer protection rights before your final decision.** Background check reports are often inaccurate, so give applicants the chance to verify or challenge the information.
8. **Before you make a final negative decision, provide the applicant sufficient time to submit evidence of mitigation or rehabilitation.** Make an individualized assessment and give the opportunity for the applicant to explain mistakes in a record, facts or circumstances related to the offense, similar work performed without incidents, work history, rehabilitation, and character references.
9. **If you use a commercially-prepared background check report service,** then you'll need to provide the proper forms to comply with state and federal consumer protection law: disclosure, authorization, pre-adverse action, and final adverse action notices.
10. **Train managers, hiring officials, and decision-makers** at your business about state and federal employment and consumer protection law, and how to implement your policy and procedures.



## UNDERSTANDING THE CALIFORNIA CRIMINAL JUSTICE SYSTEM

The criminal justice system is complicated and there are few resources to help you understand what it means when someone has an arrest or conviction record. This factsheet helps employers gain a basic understanding of the criminal justice system in order to open up job opportunities for people with records.

### Scope of the System

#### **1 in 4 adults in California has a prior arrest or conviction.**

- In Alameda County, over 375,000 people have a criminal record – the population of Fremont and Hayward combined.
- Of these people, the vast majority, about 94%, have completed their sentences.
- Only 22,475, or about 6%, are currently in the criminal justice system, meaning currently in prison or jail, or under criminal justice community supervision.

#### **Criminal records last a lifetime.**

- For most convictions there is no opportunity to “expunge” or seal the record.
- In California, many convictions are eligible for “dismissal.” A dismissal limits the use of the conviction in background checks and employment decisions, but it does not erase the record.

### Types of Offenses and Sentences<sup>1</sup>

#### **Misdemeanors can result in a sentence of:**

- Fine
- Conditional sentence of county-supervised probation
- Term of incarceration in county jail (no more than 1 yr)

Most common misdemeanor arrests in Alameda County (2012):

- Driving under the Influence = 24%
- Intoxication = 14%
- Assault and battery = 14%

#### **Felonies can result in a sentence of:**

- Fine
- Conditional sentence of county-supervised probation
- Term of incarceration in county jail
- Term of incarceration state prison facility, followed by parole

Most common felony arrests in Alameda County (2012):

- Drugs = 28%
- Property offenses (burglary, theft, auto theft) = 26%
- Assault = 18%

### Understanding Background Check Reports

**Warning:** Most background check reports do not include an explanation of criminal justice terms. Many will include references to the Penal or Health & Safety Codes, but these references will not always accurately describe the actual conviction. Background checks are also often inaccurate or outdated. Information reported in an employment background check should be verified with the applicant.

<sup>1</sup> California Dept. of Justice, Office of the Attorney General, Criminal Justice Profiles:  
<http://oag.ca.gov/crime/cjsc/criminal-justice-profiles>. Percentages rounded to nearest whole.