

State Rules Register Alert

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Pending Changes to San Francisco Restrictions on Employers and Property Owners

On October 1, 2018, recent amendments to the ban-the-box ordinances in the City and County of San Francisco that limit the information employers of more than **5 employees** (*Formerly 20 employees*) and landlords of "Affordable Housing" or "Affordable Units" can use to make employment or leasing decisions will become effective.

The provisions for covered employers and landlords are found in Article 49 of the San Francisco Police Code [§4901-4919](#). Identical provisions for city contractors are found at §12T.1 12T.11 of the San Francisco Administrative Code.

Neither of these new ordinances have any direct application to consumer reporting agencies and their reports. Rather these restrictions are placed upon the end users.

Restrictions on Employer/City Contractors

(This portion of the Alert references Ordinance Sections for Employers Only)

- Employers covered can be located anywhere however, they must do business in the City of San Francisco. Initially this ordinance in 2014 required employers to have 5 employees.
 - What employees are protected by this law? *Those who work at least 8 hours per week in the City of San Francisco.*
- Employers may not inquire of criminal history until §4904(c):
 - **After a conditional offer of employment has been made;**
(Per the restriction above, was formerly after the initial interview)
 - Employers must post a notice of consumer rights in multiple languages on their website and at the place of employment.
- Employer may not consider the following:
 - An arrest not leading to a conviction (pending charges can be considered but arrests and release without charges cannot be considered). This is similar to state law.
 - Participation in or completion of a diversion/deferred program. State law seems only to apply to completion, but state law is unclear;

(Note the restriction above specifically covers participation in, and completion in a diversion program. State law is not that clear, but a pending deferred sentence is not a "pending case" and employer cannot consider it)

- Dismissed, expunged, voided, invalidated convictions - same as state law.
- Juvenile convictions - same as state law;
- A conviction older than 7 years from the date of sentencing. No similar limit under state law.

(The above restriction does not seem to extend the time for any incarceration. So, if a person is confined for 7 years or more, it appears the employer cannot consider the conviction from one of release from confinement)

This restriction does not apply if the applicant/employer will provide services to minors, dependent adults or seniors (over age 64).

- Only convictions for felonies and misdemeanors can be considered not "infractions". This is different from state law except that an Employer may inquire about, required disclosure of, base Adverse Action on, or otherwise consider an infraction or infractions contained in an applicant or employee's driving record if driving is more than a de minimus element of the employment duties.
- Prior convictions of offenses that have been de-criminalized. (New)
- Notice Requirement:
 - Employers must post notice of rights in their office in the four languages required. Such notices are available on the State Rules Register Home page.

Individual Assessment Required, §4904(b), §4903 (for definition)

The following shall be considered by the employer when reviewing the permitted information to consider evidence of rehabilitation or other mitigating factors:

- Satisfactory completion of terms of probation or parole.
- References from post-conviction employers.
- Education/training since conviction.
- Participation/completion of rehabilitative treatment, e.g. drug, alcohol).
- Letters of recommendation from various sources.
- Mitigating factors:
 - Coercive conditions that lead to conduct.
 - Intimate physical or emotional abuse that contributed to conduct.
 - Untreated substance abuse or mental illness that contributed to the conviction.

- Only consider directly related convictions which have a direct and specific negative bearing upon the consumer's ability to perform the job. Employers must consider whether the job offers the same opportunity for the commission of a similar offense and **whether the circumstances that lead to the conviction will reoccur at work.**

Pre-Adverse Action Notice Requirements, §4904(g)(h)a

- Provide a copy of the report and must advise consumer what in the record was the basis for the contemplated adverse action.
 - **Consumer has 7 days from the date notice is provided to consumer to dispute.**
- If disputed, the employer must wait a reasonable time before taking adverse action after receiving the results of the dispute investigation.

Restrictions on Landlords of Affordable Housing


- May not require disclosure of criminal record history on application. §4906(b)
 - May inquire **after** assessing rental history and credit (may order criminal report along with these other reports but must review the criminal report last after reviewing other reports §4906(c)).
- Landlords have similar restrictions on considering criminal information. However, no "infraction" can be considered.
- Must post in office and website multiple lingual Notice of Rights under San Francisco ordinance created by the San Francisco Human Rights Commission.
- May not consider the following criminal information §4906(a).
 - Same as restrictions for employers listed above.
- Only consider directly related convictions, §4906(f), which have a direct and specific negative bearing upon the safety of a person's property given the nature of the housing. In determining whether the criminal history is directly related to the housing, the landlord shall consider whether the housing offers the opportunity of the same or similar offense to occur and whether the circumstances leading to the conduct for which the person was convicted will reoccur in the housing **and whether supportive services that might reduce the likelihood of a re-occurrence of such conduct are available on-site.**

Pre-Adverse Action Notice §4906(g)

Pre-adverse action notice is not required under the FCRA, but will be for landlords of Affordable Housing in San Francisco. Landlord shall provide consumer with a copy of the report and inform the consumer what in the record is the basis for the contemplated adverse action. **Consumer has 14 days to dispute** and landlord must wait a reasonable time after receiving the results of the dispute investigation before taking adverse action.

Subjects not to be discussed with this landlord listing are identical to the restrictions placed upon employers and city contractors.

Best Regards,
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