

State Rules Register Alert

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San Francisco Restrictions on Employers and Property Owners

Effective August 18, 2014 two new ordinances in the City and County of San Francisco will limit the information that employers of more than 20 employees and landlords of "Affordable Housing" or "Affordable Units" can use to make employment or leasing decisions.

Restrictions on Employer/City Contractors

(This Portion of the Alert References Ordinances Sections for Employers Only)

1. Employers may not inquire of criminal history until §4904(c):
 - o After the first live interview in person, by telephone, video conferencing or other technology; or at the employer's option;
 - o After a conditional offer of employment has been made;
 - o employers must post a notice of consumer rights in multiple languages on their website and at the place of employment. These notices are available from the San Francisco Office of Labor Standards and Enforcement.
2. Employer may not consider the following, §4904(a):
 - o 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.
 - o Participation in or completion of a diversion/deferred program. State law seems only to apply to completion, but state law is unclear;
 - o Dismissed, expunged, voided, invalidated convictions - same as state law.
 - o Juvenile convictions - same as state law;
 - o A conviction older than 7 years from the date of sentencing. No similar limit under state law;
 - o Only convictions for felonies and misdemeanors can be considered not "infractions". This is different from state law. Note: Lesser traffic offenses such as speeding, running a red light are infractions; offenses such as DUI, reckless driving, etc. can be either a misdemeanor or felony.

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:

1. Satisfactory completion of terms of probation or parole.
2. References from post-conviction employers.
3. Education/training since conviction.
4. Participation/completion of rehabilitative treatment, e.g. drug, alcohol).
5. Letters of recommendation from various sources.
6. Mitigating factors:
 - o Coercive conditions that lead to conduct.
 - o Intimate physical or emotional abuse that contributed to conduct.
 - o Untreated substance abuse or mental illness that contributed to the conviction.
7. 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 if a commission of a similar offense and **whether the circumstances that lead to the conviction will reoccur at work.**

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

1. Provide a copy of the report and must advise consumer what in the record was the basis for the contemplated adverse action.

2. **Consumer has 7 days from the date notice is provided to consumer to dispute.**
3. 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

1. May not require disclosure of criminal record history on application. §4906(b)
 - o 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)).
2. Must post in office and website multiple lingual Notice of Rights under San Francisco ordinance created by the San Francisco Human Rights Commission.
3. May not consider the following criminal information §4906(a). (Same as restrictions for employers listed above.)
4. 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 reoccurrence 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 discussed with this landlord listing are identical to the restrictions placed upon employers and city contractors.

Best Regards,
Larry Henry