

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: December 2017

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 25
AB 1008 “Ban the Box” Expansion – Changes in Hiring Procedures
Regarding Criminal History Consideration

AB1008, expanding the statewide “Ban-the-Box” Laws included in the California Fair Employment and Housing Act (FEHA), will significantly change our current recruiting process. Specifically, effective January 1, 2018 we may no longer request conviction information prior to making a conditional job offer.

What does this mean for you, the hiring department?

Approximately December 1, 2017 Human Resources Personnel Services staff will no longer request conviction information of qualified candidates prior to creating the eligible lists. Upon completion of the Civil Service interview process, Departments will receive eligibility lists sooner as the current step of verification of conviction information will be removed from the process.

Departments will continue to hold departmental interviews and should conduct thorough reference checks on their top candidates. Department will make a conditional offer and send the candidate for fingerprinting as appropriate. Once the County receives clearance of no criminal activity the candidate and department complete the hiring process.

If the County receives notice of criminal history, that information will be reviewed by Employee Relations, similar to the current process. Employee Relations will consider (as required in the new legislation);

- the nature and gravity of the offense or conduct
- the time that has passed since the offense and completion of the sentence
- the nature of the position

If Employee Relations determines that the applicant’s criminal history disqualifies the applicant, that preliminary decision must now be issued to the applicant in writing. The notice must include:

- 1) a copy of the applicant’s conviction history report,
- 2) specifically which conviction(s) are the basis for the preliminary decision,

- 3) an explanation of the applicant's right to respond to the preliminary decision informing them of the right to submit evidence challenging the accuracy of the conviction history report, evidence of rehabilitation or mitigating circumstances or both
- 4) and must provide for at least five business days for the applicant to respond

If, during the five business days, the applicant responds that they dispute the finding and are taking steps to obtain evidence to support their assertion, the applicant shall have five additional business days to respond to the notice.

Employee Relations will then consider any information submitted by the applicant prior to making a final decision. If Employee Relations makes a final decision to deny an applicant solely or in part because of the applicant's conviction history, Employee Relations will notify the applicant of the final denial and provide information required by law such as informing the applicant of their right to file a complaint with the Department of Fair Employment and Housing.

If the candidate is disqualified by Employee Relations the department would then move on to their next candidate, making them a conditional offer and restarting this process.

The above does not apply to any position for which a state or local agency is otherwise required by law to conduct a conviction history background check. This also does not apply to a criminal justice agency as defined in Section 13101 of the Penal Code. Such agencies include the Sheriff's Office, the Probation Department and the District Attorney's office.