

# San Francisco Amends Fair Chance Ordinance, Restricts Employer Inquiries About Marijuana-Related Convictions

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On April 3, 2018, San Francisco amended its Fair Chance Ordinance. The amended ordinance, which will take effect on October 1, 2018, will significantly impact employers that employ, or seek to employ, individuals to work eight hours or more per week in San Francisco. As with the existing ordinance, [the amended ordinance](#) will apply to employers that employ full-time, part-time, temporary, seasonal, contract, contingent, and commission-based employees. The amended ordinance, however, will dramatically increase the number of employers to which it applies. While the existing ordinance applies to employers that employ 20 or more employees, the amended ordinance will apply to employers that employ as few as 5 employees worldwide. The amended ordinance will also apply to job placement agencies, referral agencies, and other employment agencies, as well as city contractors and subcontractors.

The amended ordinance will prohibit employers from inquiring about, requiring disclosure of, or basing an employment decision on a conviction for a crime that has been decriminalized. An example of an offense that has been decriminalized is the non-commercial possession, use, and cultivation of marijuana. California voters [legalized recreational marijuana](#) for individuals over the age of 21 in November of 2016, and the substance became available for commercial cultivation, distribution, and sale on January 1, 2018.

The amended ordinance also restricts an employer's ability to ask applicants about criminal convictions. Under the existing ordinance, an employer can base an employment decision upon a person's criminal history after either a live interview or after a conditional job offer. The amended ordinance aligns with California's recently enacted statewide "ban the box" law, which prohibits an employer from inquiring about a person's criminal history until the employer makes a conditional job offer.

The San Francisco Office of Labor Standards Enforcement may investigate possible violations of the amended ordinance and impose administrative penalties where it finds a violation. Importantly, the amended ordinance also authorizes applicants and employees to sue employers over violations. Only the San Francisco City Attorney's Office can sue an employer for violations under the existing ordinance.

Where the existing ordinance treats as a single violation instances where multiple people are

impacted by the same violation at the same time, the amended ordinance will treat each violation as a separate violation for each impacted person. In addition, the amended ordinance imposes a schedule of fines dependent on the number of impacted persons and whether the business is a repeat offender. Penalties under the amended ordinance will range from a \$500 fine per impacted person for the first violation to \$1,000 for a second violation and up to \$2,000 for any violations thereafter. This change significantly increases the potential exposure for employers that violate the amended ordinance.

Further, the amended ordinance provides that penalties collected go to the impacted person, i.e., the applicant or employee, rather than to the city. This could create an incentive for some individuals to misuse the law by applying for numerous positions in hope that a company's application or policies are not in line with current law.

## Key Takeaways

San Francisco employers may want to take the following actions:

- Review employment applications and offer letters to ensure they are updated to comply with the amended ordinance
- Ensure that hiring manuals and policies comply with the requirements of the amended ordinance
- Ensure that hiring managers and human resources employees are trained and aware of prohibited areas of inquiry both before and after making a conditional job offer
- Stay abreast of the changing hiring landscape in California concerning past use of marijuana and the workplace

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