

## KNOW YOUR LEGAL RIGHTS: EMPLOYMENT & CRIMINAL RECORDS

Wondering what you are required to report on job applications?

Fired from a job because of your criminal record?

Visit Lawyers' Committee for Civil Rights' Second Chance Legal Clinic.

Call 415.814.7610 to sign up.

Leave a message and we will return your call within 1–2 business days.

Clinics are held twice per month in San Francisco.

### CONTACT US

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Below are tips for applying for jobs if you have prior arrests or convictions.

### 1. BE ACCURATE.

- If you do not accurately report your convictions, you can be rejected or fired for “dishonesty.”
- Answer only the question asked. If you're not sure about your record, contact us for help.

### 2. BE CAREFUL. FOR SOME JOBS, YOU STILL HAVE TO REPORT AN

“EXPUNGED” CONVICTION. When your conviction has been “expunged,” that means that the court has dismissed your conviction under Penal Code sections 1203.4, 1203.4a, or 1203.41. A “dismissed conviction” is not erased, and for certain types of jobs, **you may still have to report it on a job application.**

- **Jobs with Private Companies:** When applying for a job with a private company, **you do not have to report convictions that have been dismissed.\*** So, if you have had all of your convictions dismissed, you can state that you have no convictions.

- It is possible that an employer will **still see** dismissed convictions due to an **unlawful** background check report. Private companies are prohibited by law from using any information regarding expunged convictions in their employment decisions.\* **If you believe that a company has improperly used a dismissed conviction to deny you employment, contact us to discuss your rights.**

- For Jobs with the Government and Jobs that Require a Government Background Screening (aka “Live Scan”): **Dismissed convictions will show up** on the background check if you are applying for the following:
  - **A job with any government agency or entity** *Ex: San Francisco City/County, BART, MUNI, SF Public Health*
  - **An occupational license** *Ex: nursing, security, teaching, cosmetology, real estate*
  - **A job working in hospitals or health facilities**
  - **A job working with sensitive populations** *Ex: working with children, seniors, or people with disabilities*
  - **A job that requires a security clearance or requires use of a firearm** *Ex: working at airports or banks*
  - **A job that involves a government contract**

For these jobs, you may want to report all convictions, unless you're told not to reveal them. For “expunged” convictions, write that the conviction was “dismissed under Penal Code sec. 1203.4/1203.4a/1203.41.”

### 3. THERE ARE LIMITS ON WHAT AN EMPLOYER CAN ASK YOU ABOUT YOUR RECORD.\*

Employers CANNOT ask you about:

- Any arrests that did not result in a conviction;
- Participation in a diversion program;
- Convictions that have been dismissed under Penal Code §§ 1203.4, 1203.4a, or 1203.41.

\*Some exceptions apply for law enforcement jobs/jobs that require the applicant to use or possess a firearm, jobs in health facilities, and jobs in which the employer is required by law to ask about convictions.

# KNOW YOUR LEGAL RIGHTS: EMPLOYMENT BACKGROUND CHECKS

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### WHAT IS A BACKGROUND CHECK?

- Employers often hire private companies to conduct criminal background checks as part of the job application process. There are hundreds of private background check companies.
- What shows up on a background check report will depend on the type of background check

### WHAT ARE THE DIFFERENT TYPES OF BACKGROUND CHECKS?

#### Background Checks by the Government

- Applies to:
  - Jobs with a government agency or involving a government contract; or
  - Jobs that require a government-issued license or a security clearance; or
  - Jobs working in hospitals or health facilities; or
  - Jobs working with children, seniors, or people with disabilities
- You will be fingerprinted (aka "LiveScan")
- Background checks by the government could include your **full arrest and conviction history record**

#### Background Checks by a Private Company

- Applies to most jobs with private companies (Best Buy, Target, Lowe's, etc.)
- Employers must get your written permission before running a private background check

- Background checks by private companies are not allowed to report:
  - Arrests that did not lead to a conviction
  - Convictions older than 7 years
  - Convictions that have been set aside and dismissed (aka "expunged")
  - Cases where you successfully completed a diversion program
  - Certain marijuana convictions

**For background checks by private companies, ALWAYS request a copy of the report**

### WHY SHOULD I REQUEST A COPY OF A BACKGROUND CHECK REPORT?

- Many background check companies make mistakes
- You have a right to have the company fix any incorrect or unlawful information
- You may have a claim for money damages if the background check report violated the law

### HOW DO I GET A COPY OF A BACKGROUND CHECK REPORT?

- Check the box** — when you give permission for the background check, there will be a box you can check to request a copy. If you check the box, the employer must provide you with a copy
- If you don't request a copy and you are denied the job after a background check, you can contact the employer or background check company for a copy

**For more information, call 415.814.7610 or visit our website:  
[www.lccr.com/secondchance](http://www.lccr.com/secondchance)**