

Consideration of Arrests and/or Convictions¹ in Hiring² Classified Employees

OFFENSES	Conviction and none of the other columns apply	Conviction dismissed - Penal Code § 1203.4 ³	Conviction dismissed - Penal Code § 1203.4a ⁴		Conviction dismissed - Penal Code § 1210.1	Conviction rehab'd - cert. of rehab and pardon ^{5, 6}	Conviction rehab'd - judicial finding of rehab ⁷	Conviction rehab'd - Gov. Board determin. of rehab ⁸	Conviction subject to the process and jurisdiction of juvenile court law ⁹
Violent Felony ¹⁰	Must	Must	N/A		N/A	May*	Must	N/A	Cannot
Serious Felony ¹¹	Must	Must	N/A		N/A	May*	May* ¹²	N/A	Cannot
Sex Offense ^{13 14}	Must	See footnotes ^{15, 16}	Misd. May	Felony N/A	N/A	Must	Must	N/A	Cannot
Controlled Substance ¹⁷	Must	May	May	N/A	Cannot	May	May	May	Cannot
All other offenses	May ¹⁸	May	May	N/A	Cannot	May	May	N/A	Cannot

MUST CONSIDER CONVICTION	Prohibited from hiring, unless other exceptions to general hiring prohibition for the offense apply.
MAY CONSIDER CONVICTION	May hire, can consider the conviction before hiring. May be prohibited from using conviction to deny employment if adverse impact would result. ¹⁹
CANNOT CONSIDER CONVICTION	May hire, and cannot use the conviction to deny employment.

* The conviction cannot be the sole basis for not hiring. (Ed. Code, § 45122.1, subd. (e) and (f).)

¹ A conviction includes a conviction by a jury, a plea of guilty, or a plea of *nolo contendere* (no contest).

² Employers are now prohibited from utilizing certain forms of criminal history in employment decisions. (2 CCR, § 11017.1, subds. (a), (c)(1); Labor Code, § 432.7.)

³ Ed. Code, § 44008 provides that a termination of probation and dismissal of an accusation or information pursuant to Penal Code section 1203.4 shall not have any effect.

⁴ These may be considered per the exception in Labor Code, § 432.7(m).

⁵ Ed. Code, § 45122.1, subd. (e).

⁶ Note: If "pardon" in this sense means "judicially dismissed" these might not be considerable per 2 CCR, § 11017.1, subd. (b)(3).

⁷ Ed. Code, § 45122.1, subd. (f).

⁸ Note: Must be rehabilitated for at least five (5) years.

⁹ Any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law, may not be considered as a factor in hiring. (2 CCR, § 11017.1, subd. (b)(4); Labor Code, § 432.7.)

¹⁰ Applies even if offense is from a different jurisdiction but, if it had been committed in California, would have been punishable as a violent or serious felony. (Ed. Code, §§ 45122.1, subd. (a), 45122.2, subd. (b).) Penal Code section 667.5, subdivision (c) defines what constitutes a violent felony for the purpose of this determination.

¹¹ Ed. Code, § 45122.1, subd. (a). Penal Code section 1192.7, subdivision (c) defines what constitutes a serious felony for the purpose of this determination.

¹² Person must prove to the sentencing court, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one (1) year. Serious felony must not also constitute a violent felony. (Ed. Code, § 44830.1, subd. (g).) (Ed. Code, § 45122.1, subd. (f).)

¹³ Ed. Code, § 45123, subd. (a). Education Code section 44010 defines what constitutes a sex offense for the purpose of this determination.

¹⁴ School districts are prohibited from employing sexually violent predators ("SVP"). (Ed. Code, § 45124.) Designation of an individual as an SVP is not a conviction but a psychiatric determination rendered by a court. As a practical matter, a conviction for a sex offense usually precedes this determination. If a court reverses its SVP determination, the previous SVP determination is no longer a bar to employment. However, school districts should consider any sex offense conviction using the chart above and separately consider an SVP determination if it is not reversed.

¹⁵ As a general rule, a school district may not employ persons who have been convicted of a sex offense, unless the conviction is "reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed." (Ed. Code, § 45123.)

¹⁶ The following felonies cannot be dismissed pursuant to Penal Code section 1203.4: Penal Code §§ 286, subd. (c); 288; 288a, subd. (c); 288.5; 289, subd. (j); 311.1; 311.2; 311.3; 311.11; 261.5, subd. (d). (Id. at subd. (b).)

¹⁷ Ed. Code, § 45123, subd. (b). Education Code section 44011 defines what constitutes a prohibited controlled substance offense.

¹⁸ Non-felony conviction for possession of marijuana that is two or more years old may NOT be considered. (2 CCR, § subd. (b)(5).)

¹⁹ Employers are prohibited from utilizing this conviction in employment decision, if doing so would have an adverse impact on applicant on a protected basis enumerated in the law (e.g., race, color, or national origin, etc.) that the employer cannot prove is job-related and consistent with business necessity. (See 2 CCR, § 11017.1 for specific criteria.)

Consideration of Convictions¹ in Hiring² Certificated Employees

OFFENSES	Conviction and none of the other columns apply	Conviction followed by dismissal under Penal Code § 1203.4 ³	Conviction followed by dismissal under Penal Code § 1203.4a ⁴		Conviction followed by dismissal under Penal Code § 1210.1	Conviction with Certificate of Rehabilitation and Pardon	Conviction with subsequent judicial finding of rehabilitation	Conviction was subject to the process and jurisdiction of juvenile court law ⁵
Violent Felony ⁶	Must	May	N/A		N/A	May*	Must	Cannot
Serious Felony ⁷	Must	May	N/A		N/A	May*	May ^{8*}	Cannot
Sex Offense ⁹	Must	See footnotes ^{10, 11}	Misdemeanor May	Felony N/A	N/A	Must	Must	Cannot
Controlled Substance ¹²	Must	May	May	N/A	Cannot	May	May	Cannot
All other offenses	May ¹³	May	May	May	Cannot	May	May	Cannot

MUST CONSIDER CONVICTION	Prohibited from hiring, unless other exceptions to general hiring prohibition for the offense apply.
MAY CONSIDER CONVICTION	May hire, may consider the conviction before hiring. May be prohibited from using conviction to deny employment if adverse impact would result. ¹⁴
CANNOT CONSIDER CONVICTION	May hire, and cannot use the conviction to deny employment.

* The conviction cannot be the sole basis for not hiring. (Ed. Code, § 44830.1, subd. (f) and (g).)

¹ A conviction includes a conviction by a jury, a plea of guilty, or a plea of *nolo contendere* (no contest).

² Employers are now prohibited from utilizing certain forms of criminal history in employment decisions. (2 CCR, § 11017.1, subd. (a); Labor Code, § 432.7.)

³ Ed. Code, § 44008 provides that a termination of probation and dismissal of an accusation or information pursuant to Penal Code section 1203.4 shall not have any effect.

⁴ These may be considered per the exception in Labor Code, § 432.7(m).

⁵ Any record concerning or related to an arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred while a person was subject to the process and jurisdiction of juvenile court law, may not be considered as a factor in hiring. (2 CCR., § 11017.1, subd. (b)(4); Labor Code, § 432.7.)

⁶ A violent felony is any felony listed in Penal Code section 667.5. (Ed. Code, § 44830.1, subd. (c)(1).)

⁷ A serious felony is any felony listed in Penal Code section 1192.7. (Ed. Code, § 44830.1, subd. (c)(1).)

⁸ Person must prove to the sentencing court, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of school employment for at least one (1) year. Serious felony must not also constitute a violent felony. (Ed. Code, § 44830.1, subd. (g).)

⁹ See what constitutes a sex offense in Education Code section 44010.

¹⁰ As a general rule, a school district may not employ persons who have been convicted of a sex offense, unless the conviction is “reversed and the person is acquitted of the offense in a new trial or the charges against him or her are dismissed.” (Ed. Code, § 44836.) However, if the victim was a minor, the district may not employ the person even if there is a dismissal under section 1203.4 of the Penal Code. (Id.)

¹¹ The following felonies cannot be dismissed pursuant to Penal Code section 1203.4: Penal Code §§ 286, subd. (c); 288; 288a, subd. (c); 288.5; 289, subd. (j); 311.1; 311.2; 311.3; 311.11; 261.5, subd. (d). (Id. at subd. (b).)

¹² See what constitutes a prohibited controlled substance offense in Education Code section 44011.

¹³ Non-felony conviction for possession of marijuana that is two or more years old may NOT be considered. (2 CCR, § subd (b)(5).)

¹⁴ Employers are prohibited from utilizing this conviction in employment decision, if doing so would have an adverse impact on applicant on a protected basis enumerated in the law (e.g., race, color, or national origin, etc.) that the employer cannot prove is job-related and consistent with business necessity. (See 2 CCR, § 11017.1 for specific criteria.)