



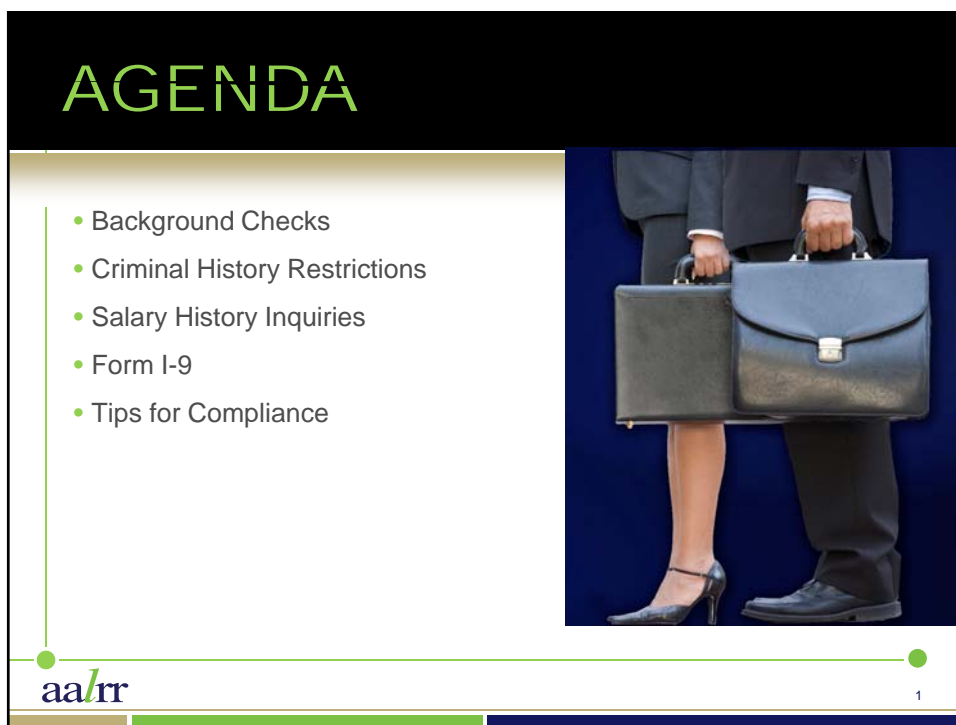
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A Professional Law Corporation

**2018 EMPLOYMENT LAW CONFERENCE**  
**MISSION=POSSIBLE**

**HELP WANTED: THE FUTURE OF  
RECRUITING & HIRING**  
SESSION 3

Presented by:  
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# AGENDA

- Background Checks
- Criminal History Restrictions
- Salary History Inquiries
- Form I-9
- Tips for Compliance

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## CAREER BUILDER SURVEY

- 72% of employers conduct background checks
- 58% of employers have caught lies on resumes during background checks
- 37% of employers have made a bad hire because the candidate lied about his/her qualifications
- One bad hire costs employers nearly \$17,000 on average

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## WHY CHECK?

- Background Checks
  - Verify accuracy of information
  - Reduce risk
  - Reduce workplace violence
- Federal and California Law
  - Federal Fair Credit Reporting Act (FCRA)
  - California Investigative Consumer Reporting Agencies Act (ICRAA)
  - California Consumer Credit Reporting Agencies Act (CCRAA)

## PROCEDURAL REQUIREMENTS

- Type of Report
- Disclosure Notice
- Written Authorization
- Certification of Compliance to Agency
- Obligation to Provide Applicant Copy of Report
- Employer Obligation when Employment Denied on Basis of Consumer Report



## PENALTIES

- Penalties
  - Monetary Penalties
  - Punitive Damages
  - Attorneys' Fees and Costs



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## VIOLATIONS

- Common Background Check Violations
  - Failure to Provide a Stand-Alone Disclosure Form
  - Failure to Provide Sufficient Pre-Adverse Action Disclosure
  - Failure to Provide Sufficient Post-Adverse Action Disclosure
  - Failure to Comply with State Background Check Laws
  - Relying Solely on Vendors to Comply with Federal and State Background Check Laws



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## RESTRICTIONS

- California Labor Code Section 432.7
  - Juvenile convictions
- Ban-the-Box Statute for Public Employers
- Statewide Ban-the-Box Legislation
  - No criminal history inquiries before a conditional offer
  - Five-step process to rescind conditional offer

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## FIVE-STEPS FOR RESCISSION

### STEP ONE: Individualized Assessment

- Employer must determine whether applicant's criminal history has a direct and adverse relationship to specific duties of the job
- Employer must consider the following
  - Nature and gravity of offense
  - When offense occurred or sentence completed
  - Nature of job sought



## FIVE-STEPS FOR RESCISSION

### STEP TWO: Written Notice of Preliminary Decision

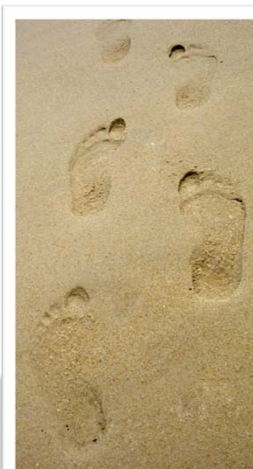
- If employer disqualifies applicant must provide a written notice of intent to deny employment
- Components of notice include:
  - The disqualifying conviction
  - Copy of report – if any
  - Right to respond



## FIVE-STEPS FOR RESCISSION

### STEP THREE: Opportunity to Respond

- Five business days for applicant to respond to preliminary notice
- If applicant notifies employer in writing and disputes findings, another five business days must be provided



## FIVE-STEPS FOR RESCISSION

### STEP FOUR: Consider Additional Information Provided by Applicant

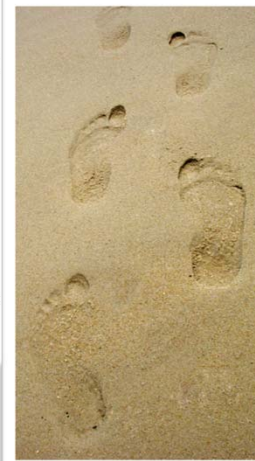
- Employer must consider any mitigating circumstance or rehabilitation evidence provided by applicant



## FIVE-STEPS FOR RESCISSION

### STEP FIVE: Written Notice of Final Decision

- If employer denies employment, employer must provide a second written notice
- Components of the notice include:
  - The final decision
  - Procedures available to challenge final decision, if any
  - Applicant right to file complaint with DFEH



## BAN-THE-BOX

- Exceptions to California Ban-the-Box
  - Required by law
  - Position with criminal justice agency
  - Position as a farm labor contractor
  - Position governed by the Securities Exchange Act of 1934
  - Fewer than five employees
- Local Ban-the-Box ordinances
  - Los Angeles
  - San Francisco





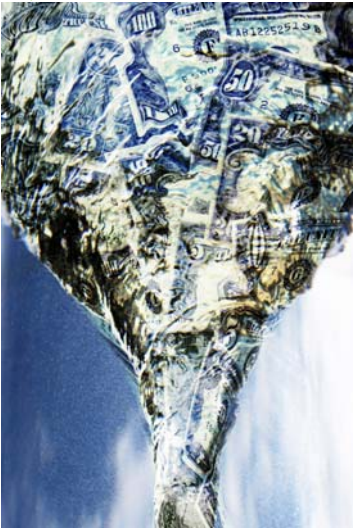


**SALARY HISTORY INQUIRIES**

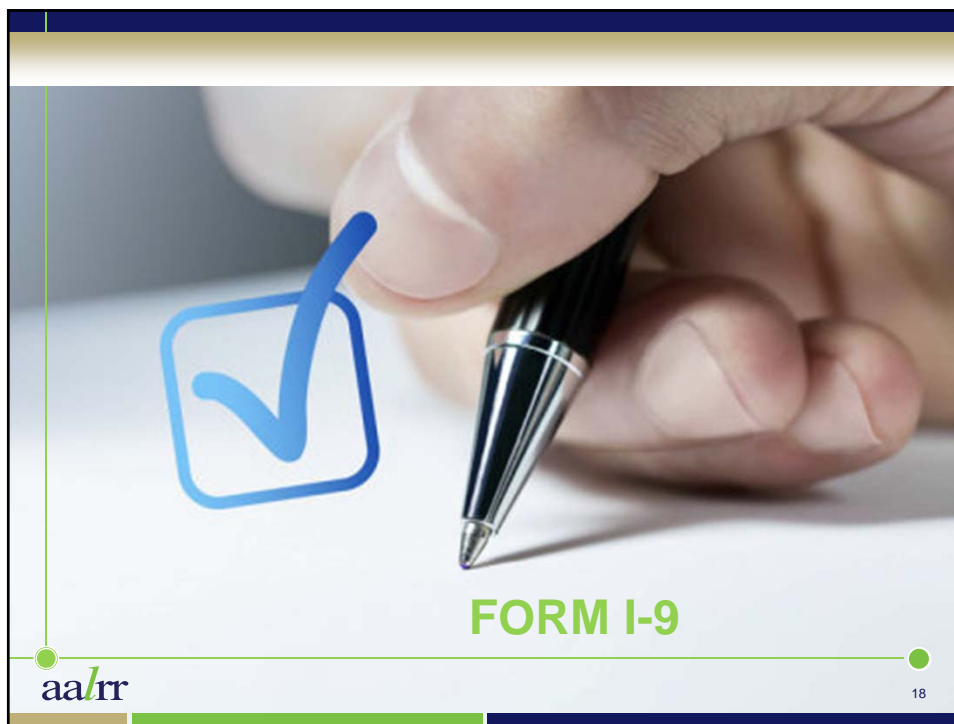
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### **NO SALARY HISTORY INQUIRIES**

- Employers must provide pay scale to applicants if requested
- Employers are prohibited from directly or indirectly seeking salary history information from applicants
- Exceptions
  - Public record and voluntary disclosures
- Local ordinances



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### NEW I-9

- Minimal changes
- Largely intended to streamline the certification process
- Failure to use new form may result in fines
- Review USCIS guidance for proper completion

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## E-VERIFY

- Program operated by USCIS
- Optional program checks social security data base
- Proposed - The Legal Workforce Act (2017)

## I-9 STORAGE

- I-9 Storage
  - Segregate from other records
  - Consistent system for storing completed forms
  - Immigrant Worker Protection Act prohibitions





- ### TIPS FOR COMPLIANCE
1. Remove requests for salary history information from employment documents
  2. Remove requests for criminal history information in employment documents used prior to a conditional offer of employment
  3. Delay conducting background checks until after conditional offers of employment
  4. Coordinate with background check vendors
  5. Audit background check forms and procedures
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## TIPS FOR COMPLIANCE

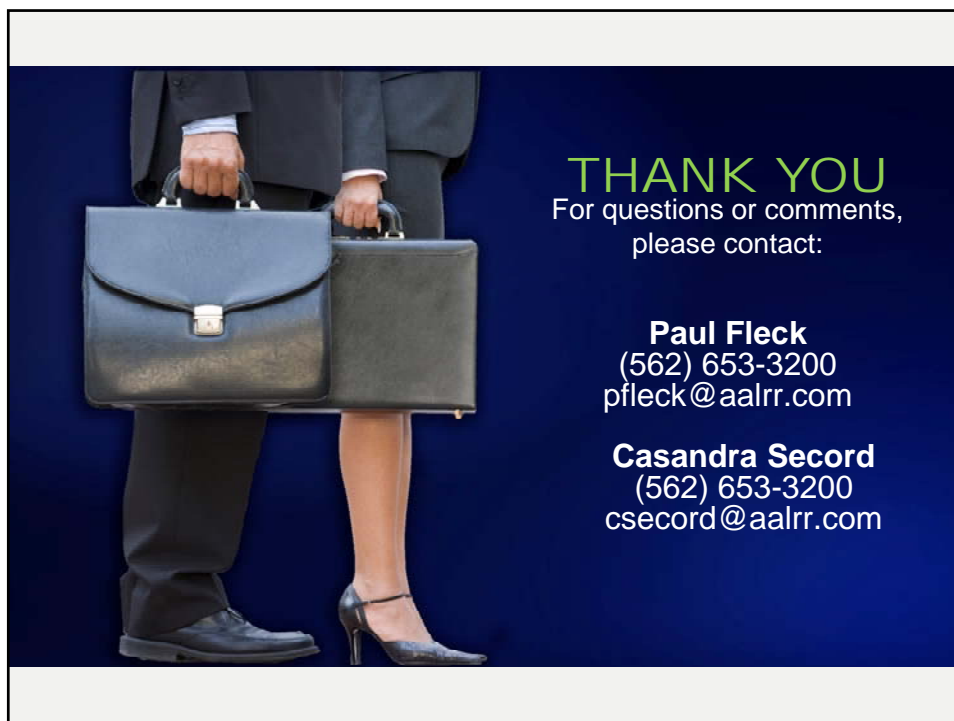
6. Modify pre- and post adverse action notices
7. Develop a salary range for every job posting
8. Train HR personnel and supervisors to refrain from unlawful inquiries
9. Use the current I-9 form
10. Conduct regular audits of the I-9 process

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**THANK YOU**  
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