



3C-REN Tri-County Regional Energy Network

February 22, 2018

Jonathan Raab
Raab & Associates

Sent via email only to: susan@raabassociates.org

On behalf of the San Francisco Bay Area Regional Energy Network (BayREN) and the 3C-REN, representing the Tri-Counties of Ventura, Santa Barbara, and San Luis Obispo, we submit these comments regarding the Standard Contract Requirements and Process presented jointly by the Investor Owned Utilities (IOUs) at the February 15, 2015 California Energy Efficiency Coordinating Committee (CAEECC) meeting. These comments solely relate to the draft terms concerning Background Checks, provision B (2) (b).

In October 2017, Governor Brown signed into law Assembly Bill 1008, Employment Discrimination: Conviction History. Effective January 1, 2018, Section 432.9 of the Labor Code relating to employment discrimination was repealed, replaced by Government Code Section 12952. This new statute makes it an unlawful employment practice under the Fair Employment and Housing Act (FEHA) for an employer (both private and public) with 5 or more employees to include on any application for employment any question that seeks the disclosure of an applicant's conviction history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer, and, when conducting a conviction history background check, to consider, distribute, or disseminate information related to specified prior arrests, diversions, and convictions.

The statute also provides for a process that must be followed by an employer that denies an applicant employment, as well as recourse for the applicant. Specifically, consideration of an applicant's criminal history will be permissible only after the employer has made a conditional offer of employment. Once that offer has been made and the criminal history obtained, the employer cannot deny an applicant a position *solely or in part because of conviction history* until the employer performs an individualized assessment. This assessment must justify denying the applicant the position by linking relevant conviction history with specific job duties of the position sought. The assessment would have to consider:

1. The nature and gravity of the offense and conduct;
2. The time that has passed since the offense or conduct and completion of the sentence; and
3. The nature of the job held or sought.

The employer may - but is not required to - commit the results of this individualized assessment to writing. Once the employer makes a preliminary decision that the applicant's conviction history is disqualifying, the employer *must* notify the applicant of this preliminary decision *in writing*. While the employer is not required to justify or explain to the applicant its reasoning for making the preliminary decision, the employer does have to:

1. Provide the written notice of the disqualifying conviction or convictions that are the basis for the preliminary decision to rescind the offer;
2. Include a copy of the conviction history report, if any;
3. Provide an explanation that the applicant has the right to respond to the notice *within at least five (5) business days*, and that the response may include submission of evidence challenging the accuracy of the conviction record, or evidence of rehabilitation or mitigating circumstances or both.

The statute further expands upon the recourse available to the applicant that was denied employment based on a past criminal conviction.

Provision B (2) (b) of the IOU proposal relating to Background Checks may be in violation of Government Code Section 12952, since to comply, employers would have to ask an applicant about their criminal history. Further, the laundry list of excludable offenses do not necessarily establish that an individual is unfit for employment.

The policy behind AB 1008 is instructive when considering the Commission directive that the IOUs propose standard contract terms and conditions addressing diverse and disadvantaged businesses and employees.¹ Relevant sections of the bill history are highlighted.

The Legislature finds and declares all of the following:

(a) In 2013, the State of California passed historic legislation to reduce barriers to employment for people with conviction histories, and to decrease unemployment in communities with concentrated numbers of people with conviction histories, recognizing that these barriers are matters of statewide concern. The Ban the Box law passed in 2013 applied to state agencies, all cities and counties, including charter cities and charter counties, and special districts.

(b) In 2015, President Obama directed all federal agencies to "Ban the Box" and refrain from asking applicants about their convictions on the initial job application.

(c) Nationwide, 29 states and over 150 cities and counties have adopted a "Ban the Box" law, and over 300 companies have signed the White House Fair Chance hiring pledge.

¹ D.18-01-004m at p. 63

(d) Nine states and 15 major cities, including Los Angeles and San Francisco, have adopted fair chance hiring laws that cover both public and private sector employers. Over 20 percent of the United States population now lives in a state or locality that prohibits private employers from inquiring into an applicant's record at the start of the hiring process.

(e) Since 2013, when Assembly Bill 218 was signed into law, five states have adopted fair chance hiring laws that cover private employers, Connecticut, Illinois, New Jersey, Oregon, and Vermont, as well as several major cities, including Baltimore, New York City, Philadelphia, and Austin, Texas.

(f) Roughly seven million Californians, or nearly one in three adults, have an arrest or conviction record that can significantly undermine their efforts to obtain gainful employment.

(g) Experts have found that employment is essential to helping formerly incarcerated people support themselves and their families, that a job develops prosocial behavior, strengthens community ties, enhances self-esteem, and improves mental health, all of which reduce recidivism. These effects are strengthened the longer the person holds the job, and especially when it pays more than minimum wage.

(h) Experts have found that people with conviction records have lower rates of turnover and higher rates of promotion on the job and that the personal contact with potential employees can reduce the negative stigma of a conviction by approximately 15 percent.

The proposed IOU language regarding background checks not only may be in violation of state law, but also adds to the preclusion of disadvantaged employees from entering the green workforce.

We support the proposed definitions of "Disadvantage Workers" presented by NRDC and the Coalition for Energy Efficiency. We would request that the population that AB 1008 seeks to protect be included in the definition of disadvantaged workers.

We look forward to continuing to engage with CAEECC on these very important issues.



Jennifer K. Berg
Principal Program Manager
BayREN



Alejandra Téllez
County of Ventura
3-C REN