Background Screening Policy Recommendations

Software Engineer

Generated October 8, 2026 for Orange Software (Jim Smith). This report applies the federal, state, and local employment-screening laws that govern the position described below. Where rules conflict, the strictest rule is shown as required.

- Required or prohibited by law
- Strongly recommended to reduce legal risk
- Best practice
- Informational reminder

Jurisdictions applied

- Federal: FCRA, Title VII / EEOC guidance, ADA — https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-III
- California — https://leginfo.legislature.ca.gov/
- City and County of San Francisco — https://codelibrary.amlegal.com/codes/san_francisco/latest/overview

Start here: the foundation of every screening policy

These items apply to every position you screen. Put them in place before anything else.

REQUIRED

Stand-alone disclosure and signed authorization before every report

Before you order any report from a background screening company, give the applicant a written disclosure that consists solely of the statement that a consumer report may be obtained for employment purposes, and get a signed (or e-signed) authorization. Keep waivers, extra terms, and state notices off the disclosure page; put state-required language on a separate page. Certify to the screening company that you have done this and will follow the adverse-action rules.

Source: 15 U.S.C. § 1681b(b)(2)
Read the law: https://www.law.cornell.edu/uscode/text/15/1681b

REQUIRED

Apply the same screening package to every applicant for the same position

Order the same searches and apply the same written decision criteria to every applicant for this position. Deviations by individual (for example, checking one candidate's credit but not another's) are the most common source of discrimination claims, and Title VII disparate-treatment liability attaches to employers with 15 or more

employees. Document any exception and the business reason for it.

Source: Title VII; EEOC Enforcement Guidance (2012)
Read the law: https://www.law.cornell.edu/uscode/text/42/2000e-2

REQUIRED

Two-step adverse action before any rejection based on a report

If a report may lead you to reject an applicant, first send a pre-adverse action notice with a copy of the report and the CFPB Summary of Rights, then wait at least 7 business days (the longest period among the laws that apply to this position) for the applicant to respond, and only then send the final adverse action notice naming the screening company, stating that it did not make the decision, and explaining the right to dispute and to a free copy within 60 days.

Source: 15 U.S.C. §§ 1681b(b)(3), 1681m
Read the law: https://www.law.cornell.edu/uscode/text/15/1681m

REMINDER

Keep a written background screening policy and adverse-action procedure

A written policy that names the searches ordered for each position, the timing, the decision criteria, the individualized-assessment steps, and the adverse-action sequence is what regulators and plaintiffs ask for first. Update your existing policy with the position-specific items below.

Source: EEOC guidance; state requirements

REMINDER

When rules conflict, the strictest one wins

This position is subject to 3 layers of law (federal, state, and local). Where they differ, follow the most protective rule for the applicant; that is the rule shown as "required" below. Recommendations are current as of October 1, 2026.

REMINDER

Keep the file

Keep the disclosure, authorization, report, assessment notes, and notices for at least one year after the decision (two years for federal contractors); several laws require longer (Maryland four years, Los Angeles and San Francisco three years, Massachusetts CORI acknowledgments one year with a dissemination log). Store reports separately from the personnel file and dispose of them securely.

Source: 29 C.F.R. § 1602.14; FTC Disposal Rule
Read the law: https://www.law.cornell.edu/cfr/text/29/1602.14

Laws applied to this position

REMINDER

Federal law

The Fair Credit Reporting Act governs every report prepared by a screening company; Title VII and the EEOC's 2012 guidance govern how criminal history may be used (15 or more employees); the ADA governs the timing of medical examinations.

Source: 15 U.S.C. § 1681 et seq.; 42 U.S.C. § 2000e
Read the law: https://www.law.cornell.edu/uscode/text/15/chapter-41/subchapter-III

REMINDER

California state law

Applied because work is performed in San Francisco, San Francisco County, California. Employers with five or more employees may not ask about, seek, or consider conviction history until after a conditional offer, and job ads may not state that people with records need not apply. Under the amended regulations (2 CCR § 11017.1, eff. Oct. 1, 2023) the rules also cover existing employees who apply for a different position or face a review after a change in ownership or policy, apply to staffing agencies and any entity that evaluates conviction history on the employer's behalf, and bar considering criminal history the applicant volunteers before the offer. Exempt: positions where a criminal-justice agency or a state, federal, or local law requires a check, farm labor contractors, and criminal-justice agencies. Applications and job ads may not mention criminal history; the disclosure form must be free of extraneous terms. Since Jan. 1, 2025 (SB 1100, Gov. Code § 12940) job ads and applications may not state that a driver's license is required unless driving is reasonably expected to be a job function and no alternative form of transportation would be comparable in travel time or cost.

Source: Cal. Gov. Code § 12952 (Fair Chance Act); 2 CCR § 11017.1
Read the law: https://codes.findlaw.com/ca/government-code/gov-sect-12952/

REMINDER

City and County of San Francisco ordinance

Employers with five or more employees worldwide may not ask about criminal history until after a conditional offer, and may never consider arrests not leading to conviction, diversion, infractions, juvenile records, convictions older than seven years, or decriminalized conduct. Before an adverse action, give the applicant a copy of the report, identify the item relied on, allow at least seven days to present evidence of inaccuracy, rehabilitation, or mitigation, and conduct an individualized assessment that weighs the nature and gravity of the offense. Under the amendments effective Aug. 10, 2026, the employer must confirm receipt of the applicant's response within 14 days, delay adverse action for a reasonable period after that confirmation, withdraw the proposed action if the applicant makes a reasonable factual showing that it rests solely on a conviction unrelated to the job, issue the final decision within 30 days of the response or of the notice if no response, and may not consider out-of-state convictions or unresolved arrests for conduct lawful in California involving abortion-related health care, gender-affirming care, drag performance, or miscarriage. Administrative penalties are $1,000, $2,000, and $4,000 per person for first, second, and later violations. Post the OLSE notice and keep records for three years.

Source: S.F. Police Code art. 49 (Fair Chance Ordinance, as amended; 2026 amendments effective Aug. 10, 2026)
Read the law: https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_police/0-0-0-8603

When you may ask about criminal history

REQUIRED

Wait until after a conditional offer of employment

Ask about, search for, or consider criminal history only after a conditional offer of employment. This is the strictest timing rule among the laws that apply to this position (California and City and County of San Francisco).

Source: Cal. Gov. Code § 12952 (Fair Chance Act); 2 CCR § 11017.1; S.F. Police Code art. 49 (Fair Chance Ordinance, as amended; 2026 amendments effective Aug. 10, 2026)
Read the law: https://codes.findlaw.com/ca/government-code/gov-sect-12952/

RECOMMENDED

Remove criminal-history language from job ads and applications

Delete the conviction question from the application form and remove statements such as "no felonies" or "clean record required" from postings; most fair-chance laws (for example Colorado, New Jersey, Vermont, Maine, Washington, New York City, Philadelphia, Los Angeles, and Seattle) treat such statements as violations. Where the law requires it (Los Angeles County, Philadelphia), the posting must instead state that criminal history will be reviewed after a conditional offer.

Source: State and local fair-chance laws
Read the law: https://codes.findlaw.com/ca/government-code/gov-sect-12952/

RECOMMENDED

Run non-criminal checks first

Sequence the order: identity and SSN trace, employment and education verification, license checks, and any permitted credit or MVR check before or with the offer; order the criminal search only once the conditional offer has been made. New York City and Los Angeles County make this sequencing mandatory.

Which records you may consider

REQUIRED

Never consider sealed, expunged, set-aside, or pardoned records

Every jurisdiction that applies bars their use. Applicants may lawfully deny that these records exist, and screening companies may not report them. Clean-slate laws now seal eligible records automatically in many states, so a record that appeared on a report last year may be off-limits this year. Dismissed, sealed, expunged, or statutorily eradicated convictions, and juvenile court matters, may not be asked about or used (Cal. Lab. Code § 432.7).

Source: State sealing and expungement statutes
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-7/

REQUIRED

Never consider juvenile records

Juvenile adjudications are confidential in every state that applies to this position and may not be requested or used: Juvenile court information may not be requested or used (Lab. Code § 432.7).

Source: State juvenile-records statutes; FCRA § 605
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-7/

REQUIRED

Do not consider arrests, dismissed charges, or pre-trial diversions that did not end in a conviction

You selected one or more non-conviction record types (a pre-trial diversion is entered before any plea and ends in dismissal, so it is a non-conviction). Remove them from your criteria. California: Employers may not ask about or consider arrests or detentions that did not result in conviction, pretrial or post-trial diversion, or convictions that were judicially dismissed, sealed, expunged, or statutorily eradicated (Cal. Lab. Code § 432.7). Any employer may ask about an arrest for which the person is out on bail or on their own recognizance pending trial. Health facilities may additionally ask about arrests for specified sex offenses (positions with regular patient access) or controlled-substance offenses (positions with access to drugs) under § 432.7(f). Screening companies may not

report arrests that did not result in conviction except while judgment is pending (Civ. Code § 1786.18(a)(7)). City and County of San Francisco bars consideration of arrests and non-convictions.

Source: State fair-employment and arrest-record statutes
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-7/

REQUIRED

Deferred adjudication: a plea without a conviction

You plan to consider deferred adjudications. A deferred adjudication is a guilty or nolo contendere plea on which the court withholds judgment while the person completes probation; on completion the case is dismissed without a conviction. Treat it in two stages. While the deferral is open it is a pending matter: consider it only where the alleged conduct relates to this position, and re-check the disposition before deciding. Once it is completed and dismissed it is a non-conviction: screening companies may report it for seven years (longer for this position, which pays $75,000 or more) under the FCRA, but once the state seals or expunges it the applicant may deny it and it may not be used. Because California bars the use of non-conviction records, a completed deferred adjudication may not be considered here; remove it from your criteria and keep only open cases whose conduct relates to the job. California treats a plea followed by dismissal the same as a diversion: Labor Code § 432.7 bars asking about or considering convictions that were judicially dismissed (Penal Code § 1203.4) or post-trial diversion, whether the deferral is open or completed.

Source: State arrest-record and sealing statutes; 15 U.S.C. § 1681c; EEOC Enforcement Guidance (2012)
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-7/

RECOMMENDED

Pending charges: job-related conduct only, and re-verify before deciding

Pending charges may generally be considered when the alleged conduct relates to the job, but do not treat a charge as a conviction. Re-check the disposition before any final decision.

Source: State fair-chance laws
Read the law: https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-...

REQUIRED

Marijuana convictions are protected here

California: Marijuana convictions older than two years may not be asked about or considered (Cal. Lab. Code § 432.8). Simple-possession convictions are being expunged automatically in many states and rarely relate to job duties; using them invites disparate-impact claims.

Source: State marijuana-conviction protections
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-8/

REQUIRED

Convictions: consider only those that relate to this job

Felony and misdemeanor convictions may be considered, but only through the individualized assessment described below and only where the offense relates to the duties of a Software Engineer. Blanket exclusions ("no felonies") are unlawful in the fair-chance jurisdictions that apply here and are treated as presumptively discriminatory by the EEOC everywhere. Specific limits: City and County of San Francisco: Convictions older than seven years (from sentence completion), infractions, and decriminalized conduct may not be considered.

Source: EEOC Enforcement Guidance (2012); state fair-chance laws
Read the law: https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-...

How far back you may look

REQUIRED

Seven-year limit applies to this position

A seven-year limit applies to this position: California — Screening companies may not report arrests, indictments, convictions, or other adverse public-record items older than seven years from disposition, release, or parole (Civ. Code § 1786.18(a)(7); parallel rule for consumer credit reports in § 1785.13(a)(6)). California has no salary exemption for employment reports; the only exceptions are life-insurance underwriting of $250,000 or more and employers explicitly required by a governmental regulatory agency to check for older records (§ 1786.18(b)). City and County of San Francisco — Convictions older than seven years (from sentence completion), infractions, and decriminalized conduct may not be considered. You indicated you want to look back further than seven years or consider convictions older than seven years; the screening company will not report them and you may not use them if found elsewhere.

Source: Cal. Civ. Code § 1786.18 (ICRAA); S.F. Police Code art. 49 (Fair Chance Ordinance, as amended; 2026 amendments effective Aug. 10, 2026)
Read the law: https://codes.findlaw.com/ca/civil-code/civ-sect-1786-18/

Individualized assessment and required notices

REQUIRED

Written individualized assessment is mandatory here

Before withdrawing an offer because of a record, document the nature and gravity of the offense, the time elapsed, and the nature of the job, give the applicant the record and your preliminary reasoning, wait the required period, consider any response, and then issue a final written decision. California: Written individualized assessment of the nature and gravity of the offense, the time elapsed, and the nature of the job. Preliminary written notice identifying the disqualifying conviction, with a copy of the report; at least five business days from receipt to respond (five more if the applicant disputes accuracy in writing and is gathering evidence); a mailed notice is deemed received five calendar days after mailing to a California address (ten out of state, twenty outside the U.S.) and an emailed notice two business days after sending (2 CCR § 11017.1); a second individualized assessment considering the response; then a final written notice with the right to file a complaint with the Civil Rights Department. City and County of San Francisco: Employers with five or more employees worldwide may not ask about criminal history until after a conditional offer, and may never consider arrests not leading to conviction, diversion, infractions, juvenile records, convictions older than seven years, or decriminalized conduct. Before an adverse action, give the applicant a copy of the report, identify the item relied on, allow at least seven days to present evidence of inaccuracy, rehabilitation, or mitigation, and conduct an individualized assessment that weighs the nature and gravity of the offense. Under the amendments effective Aug. 10, 2026, the employer must confirm receipt of the applicant's response within 14 days, delay adverse action for a reasonable period after that confirmation, withdraw the proposed action if the applicant makes a reasonable factual showing that it rests solely on a conviction unrelated to the job, issue the final decision within 30 days of the response or of the notice if no response, and may not consider out-of-state convictions or unresolved arrests for conduct lawful in California involving abortion-related health care, gender-affirming care, drag performance, or miscarriage. Administrative penalties are $1,000, $2,000, and $4,000 per person for first, second, and later violations. Post the OLSE notice and keep records for three years.

Source: Cal. Gov. Code § 12952(c); 2 CCR § 11017.1; S.F. Police Code art. 49 (Fair Chance Ordinance, as amended; 2026 amendments effective Aug. 10, 2026)
Read the law: https://codes.findlaw.com/ca/government-code/gov-sect-12952/

REQUIRED

California notices and forms

ICRAA/CCRAA disclosure must name the screening company, state the nature and scope of the investigation, and include a checkbox for a free copy of the report; the copy must be sent within three business days of the employer receiving it (Cal. Civ. Code § 1786.16). Employers must give the applicant a copy of any public record obtained without a screening company within seven days (Civ. Code § 1786.53). Fair Chance Act preliminary and final notices are required in addition to the FCRA pre-adverse and adverse notices.

Source: Cal. Gov. Code § 12952 (Fair Chance Act); 2 CCR § 11017.1
Read the law: https://codes.findlaw.com/ca/civil-code/civ-sect-1786-16/

REQUIRED

Add the "request a copy" checkbox to your disclosure

California, Minnesota, and Oklahoma require the disclosure to include a box the applicant can check to receive a free copy of the report; put it on the state-notice page, not on the stand-alone federal disclosure.

Source: Cal. Civ. Code § 1786.16; Minn. Stat. § 13C.02; 24 O.S. § 148
Read the law: https://codes.findlaw.com/ca/civil-code/civ-sect-1786-16/

Recommended searches for this position

RECOMMENDED

County criminal search: current and prior counties of residence

The county court is the source of record; order a search in each county where the applicant has lived or worked in the lookback period, identified through an SSN trace and address history. Statewide and national databases supplement, not replace, county searches.

Source: Industry standard; FCRA § 613 accuracy duties

RECOMMENDED

Statewide repository search where the state offers one

Add the statewide search for each work and residence state that has a usable repository; it catches counties the address history misses. Some states (California, for example) have no public statewide search, and repository data quality varies.

REQUIRED

Database results must be verified at the source before you act on them

A national multi-jurisdictional database is a locator tool. Before any adverse decision, the record must be confirmed against the court of record (the FCRA requires screening companies to keep public-record information complete and current, and several states bar reliance on unverified database hits). Never reject on a database-only result.

Source: 15 U.S.C. § 1681k
Read the law: https://www.law.cornell.edu/uscode/text/15/1681k

REMINDER

Sex offender registry search

Included in your package; it is a reasonable addition for most roles and is required for positions serving vulnerable populations.

RECOMMENDED

Primary-source license verification

Verify the Professional Software Engineering Master Certification directly with the issuing board (status, expiration, and disciplinary history) before the start date and at each renewal.

Employment credit reports

REMINDER

No credit report planned

Good: California restricts employment credit checks, and this position would not qualify for an exemption.

Drug and marijuana testing

REMINDER

Test after the conditional offer

A drug test for illegal drugs is not a medical examination under the ADA, but alcohol tests and any related medical questions are, and must wait until after a conditional offer. Testing everyone after the offer keeps the sequence uniform and avoids collecting medical information (prescriptions, medical-cannabis certifications) before you must.

Source: 42 U.S.C. § 12112(d)
Read the law: https://www.law.cornell.edu/uscode/text/42/12112

RECOMMENDED

Adopt a written drug-testing policy

The policy should name the positions tested, the substances on the panel, the circumstances (random and suspicion), the laboratory and medical review officer, and the consequences of a positive or refused test.

Source: Best practice

REQUIRED

Marijuana (THC) pre-employment testing is restricted here

Marijuana may not be treated like other drugs for this position. California — Employers may not discriminate based on off-duty cannabis use away from the workplace (medical or adult use) or on a drug test that detects only non-psychoactive cannabis metabolites, and may not ask about prior cannabis use except through criminal history the employer may lawfully consider (Gov. Code § 12954, AB 2188 and SB 700, eff. Jan. 1, 2024). Tests must detect active THC or impairment; employers may still bar use, possession, or impairment at work. No duty to accommodate medical cannabis use at work. Exempt: building and construction trades and positions requiring a federal background investigation or security clearance, and testing required by state or federal law. Practical

options: remove THC from the pre-employment panel for this position, or use a test that detects active THC rather than inactive metabolites where that is what the law allows.

Source: Cal. Gov. Code § 12954 (AB 2188, Jan. 1, 2024); SB 700 (no questions about prior cannabis use)
Read the law: https://codes.findlaw.com/ca/government-code/gov-sect-12954/

Salary history

REQUIRED

Do not ask about salary history

You plan to ask about prior pay. Stop: California — Employers may not ask about or rely on salary history and must provide the pay scale on reasonable request; pay scale must appear in postings, including postings placed by third parties, for employers with 15 or more employees (SB 1162). Since Jan. 1, 2026 (SB 642, Stats. 2025, ch. 468) 'pay scale' means a good-faith estimate of the salary or hourly wage range the employer reasonably expects to pay for the position upon hire. City and County of San Francisco — Employers may not ask about or rely on salary history (in addition to California's statewide ban). Remove the question from applications and interview scripts, and tell your screening company not to request prior pay during employment verification.

Source: Cal. Lab. Code § 432.3; S.F. Labor & Employment Code art. 61 (Parity in Pay Ordinance, July 1, 2018; formerly Police Code art. 33J)
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-3/

Other checks and verifications

REMINDER

Employment verification

Confirm dates, titles, and eligibility for rehire. Do not ask prior employers for pay history where a salary-history ban applies (and Massachusetts and Washington extend the ban to screening vendors).

REMINDER

Education verification

Verify degrees with the registrar or clearinghouse and check the institution against diploma-mill lists; a false degree claim is a stronger and more defensible basis for rejection than most criminal records.

REQUIRED

Rescreening and continuous monitoring need fresh authorization and the same process

Obtain a new disclosure and authorization for post-hire checks unless the original clearly and lawfully covers ongoing screening (California and several other states do not permit "evergreen" authorizations for new reports), and apply the same individualized assessment and adverse-action steps to current employees. New York City, Philadelphia, and Los Angeles County extend their fair-chance procedures to current employees.

Source: 15 U.S.C. § 1681b(b); state and local fair-chance laws
Read the law: https://www.law.cornell.edu/uscode/text/15/1681b

RECOMMENDED

OIG and SAM exclusion screening

Screen against the HHS-OIG List of Excluded Individuals/Entities and SAM.gov before hire and monthly thereafter for any role paid with federal healthcare program funds (42 U.S.C. § 1320a-7; 42 C.F.R. part 1001; OIG Special Advisory Bulletin, May 2013, which notes the LEIE is updated monthly). Employing or contracting with an excluded person exposes the provider to civil monetary penalties of up to $25,595 per item or service furnished (42 U.S.C. § 1320a-7a(a)(6); 45 C.F.R. § 102.3, 2025 inflation adjustment published Jan. 28, 2026, with no 2026 increase), plus an assessment of up to three times the amount claimed and possible exclusion. State health department rules commonly require fingerprint-based checks for direct patient care and long-term-care roles.

Source: 42 U.S.C. § 1320a-7
Read the law: https://www.law.cornell.edu/uscode/text/42/1320a-7

REMINDER

E-Verify is voluntary for this position

E-Verify is voluntary under federal law except for federal contractors with the FAR E-Verify clause (48 C.F.R. 52.222-54: enroll within 30 days of award, verify new hires within three business days of hire, and verify existing employees assigned to the contract). Every employer must still complete Form I-9 for each new hire: Section 1 by the first day of work and Section 2 within three business days of the first day of work (8 C.F.R. § 274a.2). The current Form I-9 is the 01/20/25 edition (expires 05/31/2027); USCIS also accepts the 08/01/23 edition through 05/31/2027. Several states mandate E-Verify for private employers above a size threshold; the state rule is shown where it applies. California and Illinois restrict how E-Verify may be used (no pre-offer queries; specific notice duties).

Source: 8 C.F.R. § 274a.2; 48 C.F.R. 52.222-54
Read the law: https://www.law.cornell.edu/cfr/text/8/274a.2

California employer alerts: new laws to plan for

These California laws were enacted in 2026 and reach beyond background screening. They are listed because work for this position is performed in California, and each shows who is covered and when it takes effect so your employment counsel can confirm how it applies to your company. Checked against the chaptered bill text on October 8, 2026.

REQUIRED

Stay-or-pay repayment terms are banned in contracts signed on or after Jan. 1, 2027

AB 1697, signed Sept. 30, 2026 as an urgency law, delays the start of California's stay-or-pay ban (AB 692 of 2025) by one year: it now applies only to contracts entered into on or after Jan. 1, 2027, and the 2025 version is made inoperative for calendar year 2026. From that date an employment contract may not require a worker to repay a debt, restart collection on a debt, or pay any penalty, fee, or cost because the job ends. Narrow exceptions remain, each with its own conditions: government loan-repayment programs and grant-funded recruitment or retention bonuses, tuition for a transferable credential, approved apprenticeships, discretionary bonuses under a separate agreement (five business days to consult an attorney, prorated repayment without interest, a retention period of no more than two years), residential property agreements, certain securities, insurance, and investment-adviser affiliation payments, and advanced paid time off (no more than 40 hours, no interest). A term that violates the law is void, and the employer is liable for the greater of actual damages or $5,000 per worker, plus attorney's fees. What to do: have counsel review offer letters and sign-on, retention, relocation, and training repayment agreements before Jan. 1, 2027.

Source: AB 1697 (Stats. 2026, ch. 889); Cal. Bus. & Prof. Code § 16608; Cal. Lab. Code § 926
Read the law: https://legiscan.com/CA/text/AB1697/2025

REQUIRED

Automated decision systems: no discipline or termination on an algorithm alone (operative July 1, 2027)

SB 947, the No Robo Bosses Act, adds Labor Code §§ 1520 to 1526.7. From July 1, 2027 an employer may not rely solely on an automated decision system (ADS) when making a disciplinary or termination decision. If the employer relies primarily on ADS output, a human must corroborate it with other information such as supervisor evaluations, personnel files, work product, or witness interviews, and output that cannot be corroborated may not be used. When the employee is told of the decision, the employer must give a separate plain-language notice stating that an ADS was primarily relied on, that a human reviewed and corroborated the output, whom to contact, and that retaliation is prohibited; the employee may also ask for a description of their own data the ADS used. An ADS may never be used to infer a status protected by the Fair Employment and Housing Act, to violate labor, safety, or civil rights laws, or to predict and act against workers for exercising legal rights. The penalty is $500 per violation, enforced by the Labor Commissioner or a public prosecutor. The Act does not name hiring decisions; the Civil Rights Council regulations (2 CCR § 11008.1 et seq.) and the CCPA automated decisionmaking rules continue to govern automated tools used in hiring. What to do: inventory the tools that score attendance, productivity, or conduct, including continuous-monitoring alerts, and write the human-review and notice steps into your discipline procedure before July 1, 2027.

Source: SB 947 (Stats. 2026, ch. 859); Cal. Lab. Code §§ 1520–1526.7
Read the law: https://legiscan.com/CA/text/SB947/2025

REQUIRED

Workplace surveillance: no monitoring of employees in bathrooms

AB 1331 adds Labor Code §§ 1560 to 1565, effective Jan. 1, 2027. An employer may not use a workplace surveillance tool (video or audio surveillance, geolocation, or any other device or application that collects employee data, activities, communications, or biometrics other than by direct observation) to monitor employees in a workplace bathroom unless a court orders it. Employees have the right to leave behind any surveillance tool they carry or wear when they enter a bathroom, except where the law requires them to remain available during a meal or rest period. A badge or personal alarm that policy requires for identification, safety, or access to a locked bathroom is allowed only if it does not detect or record audio or video and has no embedded artificial intelligence. The penalty is up to $500 per violation, enforced by the Labor Commissioner or a public prosecutor, who may also seek injunctive relief, punitive damages, and attorney's fees. What to do: check camera placement, wearable scanners, badges, and location-tracking apps against the bathroom rule, and state in your monitoring policy that employees may leave tracked devices outside.

Source: AB 1331 (Stats. 2026, ch. 851); Cal. Lab. Code §§ 1560–1565
Read the law: https://legiscan.com/CA/text/AB1331/2025

REQUIRED

AI surveillance: no emotion recognition and no neural data collection

AB 1883 adds Labor Code §§ 1580 to 1583, effective Jan. 1, 2027. A private or public employer may not use a workplace surveillance tool that uses artificial intelligence on employees to recognize, infer, or predict a person's emotional state, or to collect neural data (information generated by measuring the activity of the central or peripheral nervous system). The law does not prohibit a surveillance tool used to ensure safety or a tool that does neither of those two things, and it has a narrow exemption for federally required national-security, defense, and aircraft-development work. The penalty is up to $500 per violation; the employee, the Labor Commissioner, or a public prosecutor may recover it, and a civil action may seek injunctive relief, punitive damages, and attorney's fees. The statute speaks of employees and does not mention job applicants, so ask counsel before using emotion-analysis features in video interviews. What to do: ask the vendors of video, call-monitoring, productivity,

and wellness tools in writing whether the product infers mood, stress, or sentiment or reads neural signals, and switch those features off for California employees unless counsel confirms a safety use.

Source: AB 1883 (Stats. 2026, ch. 853); Cal. Lab. Code §§ 1580–1583
Read the law: https://legiscan.com/CA/text/AB1883/2025

REQUIRED

Immigration-related retaliation: broader ban and penalties up to $10,000 per person

AB 2495 amends Labor Code § 1019, effective Jan. 1, 2027. It is unlawful to use an unfair immigration-related practice to retaliate against a person for exercising a right under any local, state, or federal employment law. The listed practices are asking for more or different documents than the federal Form I-9 rules require or refusing documents that reasonably appear genuine, using E-Verify in a way the law or the E-Verify agreement does not allow, threatening or filing a false police report, and threatening to contact or contacting immigration authorities. The amendment adds any other conduct related to a person's perceived immigration status that would reasonably tend to dissuade someone from exercising those rights. Applicants and former employees are covered, actual immigration status is irrelevant to liability, and a violation within 90 days of protected activity raises a rebuttable presumption of retaliation. Remedies include a civil penalty of up to $10,000 per person for each violation, paid to that person, attorney's fees, and court-ordered suspension of business licenses. What to do: train everyone who handles Form I-9, E-Verify, and background screening to ask only for the documents the law requires and never to raise immigration status in response to a complaint.

Source: AB 2495 (Stats. 2026, ch. 748); Cal. Lab. Code § 1019
Read the law: https://legiscan.com/CA/text/AB2495/2025

REQUIRED

Harassment-prevention training must add an anti-hate speech component by Jan. 1, 2028

AB 1803 amends Government Code § 12950.1. Beginning Jan. 1, 2028, employers with five or more employees must include anti-hate speech training as a component of the existing harassment-prevention training (two hours for supervisors and one hour for other employees, every two years). It must give supervisors and employees practical guidance on recognizing, reporting, and confronting workplace speech that vilifies, humiliates, or incites hatred against people based on the characteristics the Fair Employment and Housing Act protects. The statute does not define hate speech and adds no training hours, and a training that already covers the prohibition of unlawful harassment and the prevention of abusive conduct directed at those protected characteristics satisfies the requirement. What to do: ask your training provider to confirm in writing that its course meets § 12950.1(a)(4) before 2028, and keep the completion records.

Source: AB 1803 (Stats. 2026, ch. 547); Cal. Gov. Code § 12950.1(a)(4)
Read the law: https://legiscan.com/CA/text/AB1803/2025

REQUIRED

Bereavement leave now covers one designated person

SB 1149 amends Government Code § 12945.7, effective Jan. 1, 2027. Employers with five or more employees must already allow an employee with at least 30 days of service up to five days of bereavement leave on the death of a family member listed in the statute. The amendment adds a designated person: any individual related to the employee by blood, or whose association with the employee is the equivalent of a family relationship. The employee may identify that person when requesting the leave, and the employer may limit an employee to one designated person per 12-month period. The other rules are unchanged: the days need not be consecutive, the leave follows your existing policy and may be unpaid where no policy exists (accrued paid time may be used), proof of death may be requested within 30 days of the first day of leave, and requests are confidential. What to

do: update the bereavement section of your handbook and your leave-request form.

Source: SB 1149 (Stats. 2026, ch. 679); Cal. Gov. Code § 12945.7
Read the law: https://legiscan.com/CA/text/SB1149/2025

REQUIRED

Pay data reports: a repeat failure to file now costs up to $1,000 per employee

SB 1237 amends Government Code § 12999, operative Jan. 1, 2027. A private employer with 100 or more employees must file a pay data report with the Civil Rights Department on or before the second Wednesday of May each year, covering the prior calendar year. On the Department's request a court must impose a civil penalty of up to $100 per employee for a first failure to file and, under the amendment, up to $1,000 per employee (formerly $200) for a subsequent failure; the Department may also obtain a compliance order and recover its costs. The Department will also publish each year the total number of reports submitted, in aggregate form. What to do: confirm who owns the filing, including the separate report for workers hired through labor contractors where it applies, and calendar the May deadline.

Source: SB 1237 (Stats. 2026, ch. 1019); Cal. Gov. Code § 12999
Read the law: https://legiscan.com/CA/text/SB1237/2025

REQUIRED

Cal-WARN notices must flag layoffs caused by AI or automation

SB 951 amends the California WARN Act (Labor Code §§ 1400.5 and 1401), effective Jan. 1, 2027. The Act covers an establishment that employs, or employed in the preceding 12 months, 75 or more people, and requires 60 days' written notice before a mass layoff (50 or more employees in a 30-day period), relocation, or termination. When the layoff is caused in whole or in substantial part by an AI system or other automated technology replacing or automating positions, the notice must state at the top "This notice is for a technology displacement" and give the number, classification or occupation, and work location of the affected jobs, the job functions that will be automated, and the category or type of AI system or automating technology. The Employment Development Department will publish summaries of these notices. The existing civil penalty of up to $500 for each day of violation applies to an employer that fails to give the required notice. What to do: add the technology-displacement questions to your reduction-in-force checklist.

Source: SB 951 (Stats. 2026, ch. 860); Cal. Lab. Code §§ 1400.5, 1401, 1402.7
Read the law: https://legiscan.com/CA/text/SB951/2025

REMINDER

If this position must hold CPR certification: add opioid overdose reversal (naloxone) training

AB 2150 adds Health and Safety Code § 1797.197b, effective Jan. 1, 2027. An employer operating in California that requires employees to take CPR certification training must also require those employees to complete a separate online video module on the use of naloxone, covering how to recognize an opioid overdose, how to respond, and how to administer naloxone or another FDA-approved opioid antagonist. The Emergency Medical Services Authority approves the modules, and the employer pays the cost. CPR, first aid, or other training the Authority finds meets the standard counts if the employer keeps the documentation. The law does not create a duty for an employee to administer naloxone. What to do: if this position must hold CPR certification, add the approved module to onboarding and keep the completion record with the certification.

Source: AB 2150 (Stats. 2026, ch. 384); Cal. Health & Safety Code § 1797.197b
Read the law: https://legiscan.com/CA/text/AB2150/2025

REMINDER

Workplace violence restraining orders may now cover every employee at a location

AB 1961 amends Code of Civil Procedure § 527.8, effective Jan. 1, 2027. When harassment, unlawful violence, or a credible threat of violence is directed at a workplace, or at a location where a group of employees perform their primary job duties, rather than at a specific employee, the employer may seek a temporary restraining order and an order after hearing on behalf of all employees at that workplace or location without naming an individual employee in the petition. The Judicial Council must adopt or modify the court forms by Jan. 1, 2028. What to do: add the group petition to your workplace violence prevention plan as a response option, and tell counsel promptly when a threat targets a site rather than a person.

Source: AB 1961 (Stats. 2026, ch. 910); Cal. Code Civ. Proc. § 527.8(a)(2)
Read the law: https://legiscan.com/CA/text/AB1961/2025

REMINDER

If you use arbitration agreements: California now mirrors the federal exclusions

AB 2155 amends Code of Civil Procedure § 1281, effective Jan. 1, 2027. A written arbitration agreement is not enforceable under the California Arbitration Act to the extent it is not enforceable under the Federal Arbitration Act. The Legislature's stated purpose is to bring the federal exclusions into California law; those include transportation workers engaged in interstate commerce (9 U.S.C. § 1) and sexual harassment and sexual assault claims (9 U.S.C. §§ 401–402). What to do: if applicants or employees sign an arbitration agreement during onboarding, have counsel confirm which workers and claims it can still reach, and keep the agreement out of the background check disclosure, which must stand alone.

Source: AB 2155 (Stats. 2026, ch. 46); Cal. Code Civ. Proc. § 1281(b)
Read the law: https://legiscan.com/CA/text/AB2155/2025

REMINDER

One definition of sex discrimination across California law

AB 2563, effective Jan. 1, 2027, adds a uniform definition to the California codes (including Government Code § 27 and a matching Labor Code § 12.3) and conforms the Fair Employment and Housing Act (Government Code § 12926) and the Unruh Civil Rights Act. Any provision that prohibits sex or gender discrimination is to be read as prohibiting discrimination based on assigned sex or gender category (female, male, or nonbinary), the degree of conformity to sex or gender stereotypes, gender identity, gender expression, and gender-affirming care, pregnancy or related medical conditions and decisions about related care, sexual orientation, and variations in sex characteristics, including intersex traits. The Legislature declared the bill declarative of existing law. The companion bill that would have added menopause (AB 1940) was vetoed. What to do: align the equal employment opportunity statement in your handbook, job applications, and screening policy with this list.

Source: AB 2563 (Stats. 2026, ch. 952); Cal. Gov. Code §§ 27, 12926; Cal. Lab. Code § 12.3
Read the law: https://legiscan.com/CA/text/AB2563/2025

REMINDER

Labor Commissioner claims: produce records on time, and wage liens can be renewed

SB 1316 amends Labor Code §§ 98.2 and 1174.1 and adds § 1742.05, effective Jan. 1, 2027. An employer that does not produce requested records to the Labor Commissioner within the time allowed (generally at least 15 days, with an automatic 15-day extension on a timely request, and at least 10 days for public works contractors) is barred from introducing those records as evidence, or relying on them in any other way, in the administrative hearing or writ proceeding that contests the citation. The Labor Commissioner's lien on an employer's real property for an unpaid wage judgment, which lasts 10 years, may now be renewed for additional 10-year periods.

What to do: keep payroll, time, and personnel records where they can be produced within the deadline, and calendar every Labor Commissioner request the day it arrives.

Source: SB 1316 (Stats. 2026, ch. 157); Cal. Lab. Code §§ 98.2, 1174.1, 1742.05
Read the law: https://legiscan.com/CA/text/SB1316/2025

Your process: what to change

REQUIRED

Do not consider arrests, dismissed charges, or pre-trial diversions that did not end in a conviction

See "Which records you may consider" above. You selected one or more non-conviction record types (a pre-trial diversion is entered before any plea and ends in dismissal, so it is a non-conviction). Remove them from your criteria. California: Employers may not ask about or consider arrests or…

Source: State fair-employment and arrest-record statutes
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-7/

REQUIRED

Deferred adjudication: a plea without a conviction

See "Which records you may consider" above. You plan to consider deferred adjudications. A deferred adjudication is a guilty or nolo contendere plea on which the court withholds judgment while the person completes probation; on completion the case is dismissed without a conviction. Treat it in two…

Source: State arrest-record and sealing statutes; 15 U.S.C. § 1681c; EEOC Enforcement Guidance (2012)
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-7/

REQUIRED

Marijuana convictions are protected here

See "Which records you may consider" above. California: Marijuana convictions older than two years may not be asked about or considered (Cal. Lab. Code § 432.8). Simple-possession convictions are being expunged automatically in many states and rarely relate to job duties; using them invites disparate-impact claims.

Source: State marijuana-conviction protections
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-8/

REQUIRED

Seven-year limit applies to this position

See "How far back you may look" above. A seven-year limit applies to this position: California — Screening companies may not report arrests, indictments, convictions, or other adverse public-record items older than seven years from disposition, release, or parole (Civ. Code § 1786.18(a)(7); parallel rule for consumer credit…

Source: Cal. Civ. Code § 1786.18 (ICRAA); S.F. Police Code art. 49 (Fair Chance Ordinance, as amended; 2026 amendments effective Aug. 10, 2026)
Read the law: https://codes.findlaw.com/ca/civil-code/civ-sect-1786-18/

REQUIRED

Marijuana (THC) pre-employment testing is restricted here

See "Drug and marijuana testing" above. Marijuana may not be treated like other drugs for this position. California — Employers may not discriminate based on off-duty cannabis use away from the workplace (medical or adult use) or on a drug test that detects only non-psychoactive cannabis…

Source: Cal. Gov. Code § 12954 (AB 2188, Jan. 1, 2024); SB 700 (no questions about prior cannabis use)
Read the law: https://codes.findlaw.com/ca/government-code/gov-sect-12954/

REQUIRED

Do not ask about salary history

See "Salary history" above. You plan to ask about prior pay. Stop: California — Employers may not ask about or rely on salary history and must provide the pay scale on reasonable request; pay scale must appear in postings, including postings placed by third…

Source: Cal. Lab. Code § 432.3; S.F. Labor & Employment Code art. 61 (Parity in Pay Ordinance, July 1, 2018; formerly Police Code art. 33J)
Read the law: https://codes.findlaw.com/ca/labor-code/lab-sect-432-3/

Draft policy language for this position

REMINDER

Background Screening Policy — Software Engineer

1. Purpose and scope. [Company Name] conducts background screening for the position of Software Engineer to verify qualifications, protect employees, customers, and property, and comply with applicable law. This policy applies to all applicants for the position. The same searches and criteria apply to every candidate for the position.

2. Consent. Before any report is obtained from a consumer reporting agency, the candidate receives a stand-alone written disclosure and provides written authorization. State-required notices are provided on a separate page. [Company Name] certifies its compliance to the screening company.

3. Timing. Criminal history is not requested on the application or in job advertisements. [Company Name] asks about, searches for, and considers criminal history only after a conditional offer of employment. Non-criminal checks (identity, employment, education, license) are completed first.

4. Searches. The screening package for this position consists of: county criminal court search in each county of residence and employment during the lookback period; statewide criminal search where available; national criminal database and sex-offender registry search, with all results verified at the source; license verification; education verification; employment verification; post-offer drug test under the written drug-testing policy; OIG and SAM exclusion screening. The lookback period is seven years. Records older than the lookback period, sealed, expunged, set-aside, or pardoned records, juvenile records, and arrests or charges that did not result in a conviction (other than pending charges whose alleged conduct relates to the position) are not considered. Pre-trial diversions that ended in dismissal are not considered. A deferred adjudication is considered only while the case remains open and the alleged conduct relates to the position; once completed and dismissed it is treated as a non-conviction and is not considered, and a sealed or expunged deferral is never considered.

5. Decision criteria. A conviction is considered only if it relates to the duties of the position. For a Software Engineer, the offense categories with a documented relationship to the job are listed in the position screening

matrix. No candidate is rejected automatically because of a record.

6. Individualized assessment. Before withdrawing an offer because of a record, the hiring manager and Human Resources document the nature and gravity of the offense, the time elapsed since the offense or completion of the sentence, and the nature of the position; provide the candidate with the record and the preliminary reasons; allow at least 7 business days for the candidate to respond with evidence of inaccuracy, rehabilitation, or mitigating circumstances; consider the response; and issue a final written decision.

7. Adverse action. If a report may lead to an adverse decision, [Company Name] sends a pre-adverse action notice with a copy of the report and the Summary of Rights, waits the period in section 6, and then sends a final adverse action notice that names the screening company, states that the screening company did not make the decision, and explains the candidate's dispute rights and right to a free copy of the report.

8. Drug testing. Candidates are tested after a conditional offer under the written drug-testing policy, which names the panel, the laboratory, the medical review officer, and the consequences of a positive or refused test. [Marijuana is / is not] included in the pre-employment panel for this position in accordance with applicable law, and medical-cannabis certifications are handled through the accommodation process.

9. Salary history. [Company Name] does not ask candidates or prior employers about compensation history. Offers are based on the budgeted range for the position.

10. Records and confidentiality. Screening reports and assessment records are stored separately from personnel files, accessible only to those involved in the decision, retained for [one / two / four] years after the decision, and then securely destroyed.

11. Review. This policy and the position screening matrix are reviewed at least annually and whenever the position, its work locations, or applicable law changes. Rules current as of October 1, 2026.

Source: Draft for review by counsel

Your answers

Job title	Software Engineer
What type of employer are you?	Private company
How many employees do you have across all locations?	250
Is your organization in any of these regulated industries?	None of these
Will the background check be obtained from a background screening company (a consumer reporting agency) or run in-house by your staff?	Screening company
Where will this position perform its work?	At a fixed work site
Work site location	San Francisco, San Francisco County, California
Where is your company headquartered?	California
Who is being screened?	New applicant
Employment status	Full-time

Is this a managerial or executive position, or exempt from overtime under the FLSA?	No
Does the position involve any of the following?	None of these
Will the applicant drive as part of the job?	No
Is this a safety-sensitive position under federal law, state law, or your own written policy?	No
Is a background check for this position required by a federal or state law, a licensing board, a government contract, or a bonding or insurance requirement?	No
Does the position require a security clearance or work on a federal contract?	No
Does the position require a professional license or certification?	Yes
How is this position paid?	Annual salary
Expected annual compensation	$285,000
Will you ask the applicant about their prior salary or wage history?	Yes
Will you run a criminal history check?	Yes
Which criminal searches do you plan to run?	County courts (current and prior residences); Statewide repository; Federal district courts; National multi-jurisdictional database; Sex offender registry; Global watchlists / OFAC
Which record types do you want to consider?	Felony convictions; Misdemeanor convictions; Pending charges; Pre-trial diversion (no plea entered; charge dismissed on completion); Deferred adjudication after a guilty or nolo contendere plea (judgment withheld); Marijuana-related convictions; Convictions older than 7 years
How far back do you want to look?	Not sure, recommend for me
When do you currently ask about criminal history?	Only after a conditional offer
Will you use a written individualized assessment (nature of the offense, time elapsed, relation to the job) before rejecting an applicant because of a record?	Yes
Will you apply the same criteria to every applicant for this position?	Yes
Will you request an employment credit report?	No
Will you drug test?	Yes
When will you test?	Random after hire; Reasonable suspicion
Will the panel include marijuana (THC)?	Yes
Is the position subject to federal drug-testing rules (DOT, FAA, FTA, PHMSA, Coast Guard)?	No
Which verifications will you run?	Employment history; Education; Professional license
Will you pull a motor vehicle record (MVR)?	No

Will you review the applicant's social media or other public internet content?	No
Will any automated, algorithmic, or AI-based tool be used to score, rank, or screen applicants or background reports?	No
Will you rescreen employees or use continuous monitoring after hire?	Yes
Will you check federal exclusion lists (OIG, SAM)?	Yes
Has the applicant lived, worked, or studied outside the U.S. in the past 7 years?	No
At what stage do you currently run the background check?	After a conditional offer
Do you give applicants a stand-alone FCRA disclosure and get written authorization before ordering the report?	Yes
When a report leads you to reject someone, do you send a pre-adverse action notice, wait, and then send a final adverse action notice?	Yes, both notices
What would you like the builder to produce?	Both

Your screening policy checklist

Green: already in place. Amber: recommended addition. Red: required addition.

Stand-alone FCRA disclosure and signed authorization
You give the stand-alone disclosure and get written authorization before every report.

Two-step adverse action (pre-adverse notice, wait, final notice)
You send both notices and wait the required period.

Timing of the criminal-history question
You ask only after a conditional offer of employment, which meets the strictest rule that applies here.

Written screening policy and adverse-action procedure
You keep a written policy and procedure; update it with the position-specific items in this report.

Written individualized assessment before any rejection
You document the nature of the offense, the time elapsed, and the relation to the job before deciding.

Same searches and criteria for every applicant
You apply one package and one set of criteria to every applicant for the position.

Record types limited to what the law allows
Add to your policy: do not consider arrests, dismissed charges, or pre-trial diversions that did not end in a conviction; consider deferred adjudications only while open and job-related; never once completed and sealed; marijuana convictions are protected here.

Lookback period within the legal limit
Add to your policy: seven-year limit applies to this position.

No salary-history questions
Add to your policy: do not ask about salary history.

Drug and marijuana testing rules
Add to your policy: marijuana (THC) pre-employment testing is restricted here.

E-Verify and Form I-9
You are enrolled in E-Verify and run every new hire.

Rescreening and continuous monitoring
Recommended: obtain a fresh authorization for each post-hire check and apply the same assessment and adverse-action steps to employees.

New California employment laws reviewed with counsel
Recommended: review the 14 items under "California employer alerts" with your employment counsel and calendar each effective date.

Important

This report is general compliance information prepared from the laws in effect on the date shown. It is not legal advice and does not create an attorney-client relationship. Laws change frequently and local rules may add requirements; confirm the recommendations with your employment counsel before adopting a policy. screeningpolicy.com and Langley Porter AG LLC do not make hiring decisions and are not a law firm.