

Eye On Compliance: When Calif. Jobs Require Driver Licenses

By **Ani Khachatryan** (December 17, 2024)

This article is part of a monthly column that provides guidance on employers' top compliance concerns. In this installment, we discuss a new California law that bars employers from requiring a job applicant to have a driver's license.

On Sept. 28, California Gov. Gavin Newsom signed into law S.B.1100, which amends the California Fair Employment and Housing Act to restrict an employer from including a statement in a job advertisement, posting, application or other material that an applicant must have a driver's license.[1] The law is scheduled to take effect Jan. 1, 2025.



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Background

The California Fair Employment and Housing Act, or FEHA, forbids employers and other entities from discriminating against individuals on the basis of national origin.

In 2014, A.B. 1660 amended FEHA to prohibit employers from discriminating against candidates with nonstandard driver's licenses. A nonstandard driver's license, or an A.B. 60 driver's license, is available for individuals who cannot provide proof of legal presence in the United States but can otherwise provide proof of identity and California residency, as well as meet specific requirements set by the California Department of Motor Vehicles.

The 2014 amended legislation, however, did not prevent employers from rejecting applicants or terminating the employment of workers for lack of a driver's license. Furthermore, making hiring decisions based on whether a candidate has a driver's license or owns a vehicle can contribute to discrimination against marginalized communities and reinforce socioeconomic disparities. These conditions ultimately laid the groundwork for S.B. 1100.

Legislative History Surrounding S.B. 1100

According to the bill's author, state Sen. Anthony Portantino, D-Burbank, driver's licenses are increasingly becoming a condition of employment in California. The law aims to prevent discrimination against individuals without licenses by narrowing the scope of allowable exceptions for requiring licenses as mandatory for employment.

The stated purpose of this new amendment is to promote employment opportunities for job applicants who rely on ride hails, public transit, biking or walking as their primary means of transportation.

Many of these job applicants lack the financial means to own or lease a vehicle, while some experience medical issues that hinder their ability to obtain a driver's license. Others have lost their driving privileges. Furthermore, many Californians in urban areas have become accustomed to carpooling or using ride-hailing services.

The California State Legislature's intent behind S.B. 1100 is to ensure that unnecessary barriers are not created for applicants.

The New S.B. 1100 Framework

Beginning Jan. 1, employers must satisfy a two-part test before they can include a statement in a job advertisement, posting, application or other material that an applicant must have a driver's license. The test requires the following:

(A) The employer reasonably expects driving to be one of the job functions for the position.

(B) The employer reasonably believes that satisfying the job function described in paragraph (1) using an alternative form of transportation would not be comparable in travel time or cost to the employer.

A question may arise as to whether driving is an essential or major function of the job, but the new FEHA amendment language does not require that driving be an essential function of the job; the statute only refers to situations where driving would be "one of the job functions."

Penalties for Violations

Employers who violate the new FEHA amendment could be liable for compensatory damages, punitive damages, attorney fees and costs. In addition, they could face injunctions and declaratory relief.

Best Practices for Compliance

To ensure compliance with the new law, employers should consider the following best practices.

First, employers should assess each job position to evaluate whether it meets the two-part test. If a position does not meet the test, rewrite the job posting, application and any other documents that note a driver's license requirement for the position.

Employers should explain their reasoning if they determine that a driver's license is necessary for a specific role. By documenting the necessity of requiring a license, hiring managers can demonstrate that it is a bona fide occupational qualification and avoid potential legal challenges under laws such as the Americans with Disabilities Act or Title VII of the Civil Rights Act. Additionally, such transparency reduces the perception of arbitrary or unfair criteria that might deter qualified candidates.

Employers will also want to revise job descriptions accordingly. Employers must be mindful of the amended FEHA when drafting job advertisements, postings, applications and comparable preemployment documents. This will promote awareness of how blanket requirements for a driver's license might disproportionately exclude individuals with disabilities, those from disadvantaged socioeconomic backgrounds or others who are legally unable to drive.

It will also be important to evaluate and revise, if necessary, any hiring policies that refer to driver's licenses. Employers should review and update their handbooks at least annually, incorporating HR expertise to ensure accuracy and alignment with current legal standards and organizational goals.

Further, employers should consider training for hiring managers. If the position does not

satisfy the two-part test, hiring managers should avoid questioning job applicants about whether they have a driver's license. Instead, they should focus on whether job applicants have a reliable mode of transportation that would enable them to arrive to work.

Hiring managers and human resources personnel should complete training to understand the law's implications and prevent discriminatory practices in the hiring process. In doing so, they can ensure compliance with the law, identify essential job functions and adapt their hiring practices — ensuring that job descriptions, interviews and onboarding processes align with the new regulations.

A Similar Law: Oregon S.B. 569

One other state with similar hiring restrictions is Oregon. Oregon's S.B. 569 prohibits employers from requiring a valid driver's license as a condition of employment unless the ability to legally drive is an essential function of the job or is related to a legitimate business purpose. The law also requires employers to accept alternative forms of identification, as outlined by the U.S. Citizenship and Immigration Services, for verifying employment eligibility.

The law became effective Jan. 1, 2022, establishing that employers cannot require a driver's license as part of the identification step of the hiring process. Under the law, however, employees may still voluntarily offer their driver's license as part of the I-9 identification process.

If found in violation of the law, employers could face civil penalties, including fines, and may be required to take corrective action such as hiring or reinstating an employee who was discriminated against.

Conclusion

S.B. 1100 highlights the need for California employers to reassess their employment practices related to driver's licenses and confirm that all job requirements are truly essential for a given role.

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[1] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240SB1100.