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Workplace Privacy

§8.15   2. Specified Marijuana-Related Convictions

An employer may not ask a California applicant or employee, or attempt to discern from any other source, whether the applicant or employee was convicted of specified marijuana-related convictions that are older than 2 years. Lab C §432.8. But see *Starbucks Corp. v Superior Court* (2008) 168 CA4th 1436, 1448 (class of job applicants with no marijuana-related convictions could not claim statutory damages for prospective employer's questions regarding past marijuana convictions when class did not allege injury that statute was designed to remedy).

Penalties for violation. An employer that violates Lab C §432.8 may be liable for the same penalties as for a violation of Lab C §432.7. Lab C §432.8.

NOTE► Tension exists between federal and state law on the marijuana issue. Under federal law, marijuana is still a controlled substance, the possession or use of which is unlawful. Thus, it is not unlawful to terminate an employee who uses marijuana lawfully under California state law. *Ross v RagingWire Telecommunications, Inc.* (2008) 42 C4th 920, 926. Therefore, it might be lawful for an employer to inquire about an applicant's marijuana use in violation of federal law.

For further discussion, see **Privacy Compliance and Litigation in California**: Workplace Privacy, chapter 8 (Cal CEB). Available in print and through **OnLAW**.

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