

Prisoner Reentry and Employment

A Guide to New York Code Correction Law Article 23-A,
Sections 750-755

PREPARED BY THE UPPER MANHATTAN REENTRY TASK FORCE

In October 2007, the Center for Court Innovation, in partnership with the New York City Mayor's Office of the Criminal Justice Coordinator, convened the Upper Manhattan Reentry Task Force, based at the Harlem Community Justice Center. The Task Force seeks to achieve two broad goals: 1) Enhancing public safety; and, 2) Reducing recidivism among parolees returning to the Upper Manhattan. The Task Force is funded by a grant from the New York State Division of Criminal Justice Services.

Upper Manhattan Reentry Task Force

What You Need to Know About NY Correction Law Article 23-A, Sections 750-755

1. What does NY Correction Law Article 23-A say?

The statute says:

No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or
- (2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. (Correction Law § 753.)

2. What is the purpose of NY Correction Law Article 23-A? Whom does the law protect?

Article 23-A was passed in 1977 to encourage licensure and employment of individuals with prior convictions. It applies to all persons previously convicted of one or more criminal offenses who apply for a license or employment, and those with convictions who were granted a license or employment following their conviction. Both public and private employers are subject to the law.

3. How does the law protect job seekers?

Article 23-A applies when someone who has a criminal record applies for a license or employment. It does not apply to disciplinary action taken if someone already licensed or employed is convicted of a crime.

Generally, an employer may not discriminate against an applicant based solely on the applicant's previous criminal convictions, or by reason of a finding of lack of "good moral character" based on the fact of previous convictions. (Article 23-A § 752.)

Although an employer may not deny employment based solely on an applicant's criminal record, the employer may refuse to hire the person if there is a "direct relationship" between the offense and the specific license or employment, or if granting or continuation of the license or employment would involve "unreasonable risk" to property or to the safety or welfare of others. (Section 752.)

Employers should consider the following factors when determining whether there is a direct relationship or unreasonable risk in hiring the applicant:

- the specific duties and responsibilities necessarily related to the license or employment
- the bearing, if any, that the criminal offenses will have on the applicant's fitness or ability to perform such duties or responsibilities
- the time that has elapsed since the occurrence of the offense
- the age of the person at the time of commission
- the seriousness of the offense
- any information regarding the offender's rehabilitation and good conduct
- the legitimate interest of the employer in protecting property and the safety and welfare of others
- Certificates of Relief from Disabilities and Certificates of Good Conduct
- the public policy of the State to encourage licensure and employment of persons with prior criminal convictions.(Section § 753.)

4. Can employers ask if applicants have been convicted of a crime?

Employers may ask if applicants have been convicted of a crime, but they must then provide applicants with the opportunity to explain the circumstances surrounding conviction. According to NY State and City human rights laws, employers *may not* ask about prior arrests that did not lead to conviction, or sealed violations, youthful offender adjudications, and juvenile delinquency findings.

5. What are the risks for employers?

Article 23-A does not immunize employers from negligent hiring liability if they hire an employee who does pose a safety risk. However, recent legislation has provided some protection for employers who considered the applicant's criminal record and the factors list in answer #3.

6. What can people with criminal convictions do to improve their chances when applying for employment?

Always answer all questions truthfully. If an applicant is asked about prior convictions and fails to tell the truth, an employer may legally refuse to hire or fire him or her for falsifying information.

It is always a good idea for applicants to get copies of their rap sheets from the NY State Department of Criminal Justice Services (DCJS) to ensure that they are providing complete and accurate answers to application or interview questions. Applicants should also check their rap sheets for mistakes, such as incomplete entries, double entries, or cases that should be sealed but are not. If an applicant finds a mistake regarding a specific

case, he should send a disposition slip for the case from the court where it was heard, along with a “Record Review and Statement of Challenge,” to DCJS.

Job seekers should also apply for Certificates of Relief from Disabilities or Certificates of Good Conduct. An applicant with only one felony conviction can apply for a Certificate of Relief from Disabilities. An applicant with two or more felony convictions can apply for a Certificate of Good Conduct. Applicants should consult with a legal professional or reach out to service providers to discuss their eligibility for these certificates.

7. What if I suspect that my criminal conviction was used to deny a license or job?

Under certain circumstances, you can request a written statement stating why your license or job application was denied. You can request this any time and either in writing or in person. Employers will have to give a written response within 30 days explaining the basis for their decisions. (Correction Law § 754.) Employers should consult with legal professionals in order to ensure that they are properly complying with this law.

8. Penalties for unlawful discrimination

There are several different things that an applicant can do if he or she believes that she was discriminated against based on a criminal conviction. Applicants should seek legal advice in order to assist them in determining what actions are appropriate.

9. What is the Employer Education Act?

The Employer Education Act signed into law by Governor Patterson on August 5, 2008, requires employers to (1) provide job seekers with a copy of Correction Law Article 23-A when relying on a criminal background check during the hiring process, and (2) post Article 23-A in the workplace. Employers may purchase a poster with this information.

10. How does NY Correction Law Article 23-A compare to analogous laws of other states?

New York is one of 14 states to prohibit some form of employment discrimination based solely on criminal histories. Some cities—including Boston, Chicago, Minneapolis, San Francisco, St. Paul, Alameda County, Indianapolis, Los Angeles, Newark, and Philadelphia—have also adopted ordinances to prevent discrimination against applicants for city employment.

RESOURCES: INFORMATION AND RELEVANT CASE LAW

Dos and Don'ts of Hiring Ex-Convicts, 13 No. 4 NY Emp L Letter 5 [2006]. Legal Action Center [LAC], New York State Criminal Justice Services, <http://lac.org/index.php/lac/164>.

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Legal Action Center, *Certificates of Relief from Disabilities and Certificates of Good Conduct* [2007], http://lac.org/doc_library/Certificates%20of%20Relief%202007.pdf.

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O'Brien & Darrow, *Adverse Employment Consequences Triggered by Criminal Convictions: Recent Cases Interpret State Statutes Prohibiting Discrimination*, 42 Wake Forest L. Rev. 991, 1022-23; Meade, *Employment-Focused Reentry Strategies Help Cities Combat Crime*, National League of Cities, Jan. 12, 2009, <http://www.nlc.org/articles/articleItems/NCW11209/reentrystrategies.aspx>.

Moses & Singer, LLP, *Client Alert: New Laws Govern Hiring/Retention of People with Criminal Convictions* [2009], <http://mosessinger.com/articles/files/ALERT%20NewLawsGovernHiringRetentionOfPeopleWithCriminalConvictionWEB.pdf>.

Durante v Board of Regents of State University of New York, 70 AD2d 692 [3d Dept 1979].

Alston v City of New York, 702 NYS2d 186, 187 [2000].

Bonacosa v Van Lindt, 71 NY2d 605 [1988].

Arrocha v Bd. of Educ., 93 NY2d 361 [1999].

Al Turi Landfill, Inc. v NYS Dept. of Env'tl. Conservation, 98 NY2d 758 [2002].

Ford v Gilden, 200 AD2d 224 (1st Dept 1994).

La Cloche v. Daniels, 755 NYS2d 827 (NY Sup Ct 2003).

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Soto-Lopez v NYC Civil Serv. Commn., 713 FSupp 677 (1989).

City of NY v NYC Civil Serv. Commn., 30 AD3d 337 (1st Dept 2006).