

KNOW YOUR RIGHTS

WHAT YOU SHOULD KNOW ABOUT EMPLOYMENT DISCRIMINATION BASED ON ARREST AND CONVICTION RECORDS

1. Can employers and agencies deny me a job or license because of my criminal conviction?

Most employers and agencies in New York can only deny you a job or license because of your criminal conviction if (1) there is a **direct relationship** between the work and the criminal offense, or (2) giving you the job or license would involve an **unreasonable risk** to people or property.

To decide whether there is a direct relationship or unreasonable risk, employers and agencies must consider:

1. New York's public policy encouraging employment of people with criminal records;
2. The specific job duties;
3. The offense's impact on your ability to perform the job duties;
4. The amount of time that has passed since you committed the offense;
5. Your age at the time of the offense;
6. The seriousness of the offense;
7. The employer or agency's legitimate interest in protecting people or property;
8. Any **evidence of rehabilitation**.

2. What is evidence of rehabilitation?

Evidence of rehabilitation can include (1) a Certificate of Relief from Disabilities or a Certificate of Good Conduct; (2) letters of

recommendation from your employers, teachers, counselors, clergy, parole/probation officers, family, and friends; (3) evidence that you have attended school, job training, counseling, or other programs; (4) your own explanation of the offense(s) and the positive life choices you have made since then; or (5) any other evidence in your favor. If you have a Certificate of Relief from Disabilities or a Certificate of Good Conduct, employers and agencies must presume you are rehabilitated.

To learn how to apply for a Certificate of Relief from Disabilities or a Certificate of Good Conduct, see The Legal Aid Society's pamphlet, *"Know Your Rights: What You Should Know About Certificates of Relief from Disabilities and Certificates of Good Conduct."*

3. I am a Home Health Aide or a Certified Nurse Aide, and I just got a letter from the New York State Department of Health stating that my criminal record may disqualify me from employment. What should I do?

Call the Department of Health's Criminal History Record Check ("CHRC") Legal Review Unit at 518-408-1627. Ask the CHRC what documents their investigator wants you to provide and which conviction(s) the investigator is concerned about. You should respond to the letter in writing within 30 days. Your response should include a personal statement that explains the facts of the crime in a truthful and specific way, and describes your remorse and rehabilitation. You should also provide any documents requested by the CHRC investigator, and any other evidence of rehabilitation. (See Question #2 for examples of evidence of rehabilitation.)

4. Can my criminal record be expunged?

New York State does not have expungement. However, some cases can be "sealed." **It is illegal for most employers and licensing agencies to ask about sealed cases or to discriminate against you because of a sealed case.** The following types of cases can be sealed: (1) Most arrests that did not lead to conviction (for example, cases dismissed after an adjournment in contemplation of dismissal ("ACD")); (2) Most arrests that led to non-criminal convictions (for example, "disorderly conduct" violations), after you complete the sentence; (3) Youthful offender adjudications; (4) Juvenile delinquency proceedings and adjudications; (5) Convictions for prostitution or loitering for the purpose of prostitution if you were the victim of sex trafficking; (6) Certain criminal convictions, if you complete a certain type of drug treatment program and meet other requirements. The first four types of cases should be automatically sealed after the case is closed, but the courthouse often makes mistakes. To learn how to correct these mistakes, see The Legal Aid Society's pamphlet, *"Know Your Rights: What You Should Know About Correcting Background Check Errors."*

5. What is the New York City Fair Chance Act ("FCA")?

The FCA prohibits most employers and employment agencies in New York City from asking about or considering your pending arrest or conviction record until after they offer you a job. Until they offer you a job, it is illegal for these employers and agencies to ask about your criminal record in advertisements, job applications, interviews, or by running a background check. Your refusal to respond to an illegal

inquiry cannot disqualify you from employment. The FCA does not apply to jobs at law enforcement agencies, police officer or peace officer jobs, and some other jobs.

6. What does the FCA permit employers to do after they offer me a job?

After you are offered a job, employers can ask about and consider your pending arrest and conviction record. However, most employers cannot ask about sealed cases or discriminate against you because of a sealed case.

7. Does the FCA permit employers to withdraw their job offer after they consider my arrest or conviction record?

Sometimes. Employers that want to withdraw the job offer because of your prior conviction must (1) evaluate the eight factors described in Question #1 and give you a document called the **NYC Fair Chance Notice** that explains how the eight factors apply to the job and your conviction; (2) give you a copy of any background check they ran; and (3) give you a reasonable time—at least three business days—to respond to these documents. Employers must consider your response and cannot withdraw the job offer unless there is a direct relationship between the job and the conviction or you pose an unreasonable risk to people or property.

Employers that want to withdraw the job offer because of your pending arrest must give you (1) a document that explains why they are withdrawing the job offer; (2) any background check they ran; and (3) a reasonable time to respond.

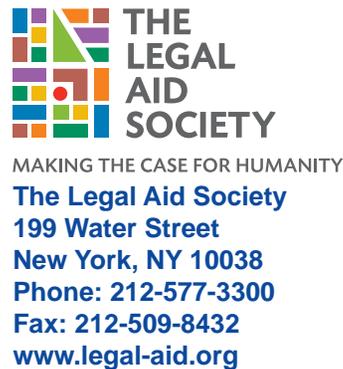
8. What should I do if an employer gives me the NYC Fair Chance Notice or a copy of the background check they ran?

You should truthfully explain the facts of the offense/crime and provide evidence of rehabilitation. If there is an error on the background check, you should explain that there is an error.

9. How can I enforce my right to be free from criminal records discrimination?

If the employer or agency that discriminated against you is a government agency, you can file an Article 78 petition in state court within four months of the job or license denial. If the employer is not a government agency, you can file a complaint with the New York City Commission on Human Rights within one year of the job denial or file a lawsuit in court within three years of the job denial.

For more information, contact The Legal Aid Society's Access to Benefits Helpline by calling 888-663-6880.



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MAKING THE CASE FOR HUMANITY