Do You Have A Criminal Conviction History?

A GUIDE TO YOUR EMPLOYMENT RIGHTS IN NEW YORK

NEW YORK CITY BAR
Introduction

Searching for the right job can be difficult. It can be harder if you have a criminal conviction history. This guide was written to help you in the process by informing you about employment rights and how to exercise them. The more you understand these rights, the better prepared you will be to protect them.

Please note that this guide provides general information only. The information in this guide should not be used or taken as legal advice for your specific situation. For legal advice about your rights in a particular situation, please speak to a lawyer. If you cannot afford a lawyer, see pages 14-16 for a list of resources that may be available to you for additional information and support.
QUESTION: May I be refused a job or denied an occupational license because I was arrested, even though I was never convicted of anything?

ANSWER: Generally, New York employers cannot refuse to hire you based solely on the fact that you have been arrested, but not convicted of a crime. This is true regardless of how many times you have been arrested. For instance, if you have been arrested 10 times, yet none of those arrests resulted in a conviction, you cannot be refused a job because of your arrest record. Similarly, you cannot be denied an occupational license from a New York licensing agency because of your arrest record. However, there is an exception for law enforcement agencies which are permitted to consider your arrest record. In addition, employers are permitted to ask about and consider open arrests, that is, arrests that have not resulted in a disposition yet

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QUESTION: May employers ask whether I have ever been arrested?

ANSWER: Generally, no. Employers cannot ask you about arrests, either during a job interview or on a job application. There are exception to this rule, however. Employers are permitted to ask about open criminal charges, that is arrests that have not yet resulted in any disposition. In addition, law enforcement agencies are permitted to ask about and consider arrests when deciding whether to hire you. However, as discussed on page 4, employers are permitted to ask whether you have ever been convicted of a crime.
Completing A Job Application

QUESTION: How do I handle questions on a job application relating to arrests?

ANSWER: If you are asked whether you have ever been arrested, or how many times you have been arrested, you are required to disclose information relating to open arrests and convictions only. If none of your arrests are open or led to any convictions, you are legally permitted to answer "no" to these questions, which are considered to be illegal. If a job application asks you to list any "crimes," "convictions of crimes," or "criminal offenses," you should list only misdemeanor and felony convictions - not arrests, if those arrests did not lead to conviction. If an application asks about "pending arrests" or "arrests not yet adjudicated," you should list only arrests that are still open, that is, arrests that have not yet resulted in any disposition.

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QUESTION: What if I lie, or fail to disclose something, on my job application?

ANSWER: Don't. If you lie or fail to disclose something, and an employer finds out about it, the employer can legally refuse to hire you or, if you have already been hired, fire you for lying. Employers can learn about your criminal record several ways. In New York, some public employers (federal, state and local government agencies) are allowed to get rap sheets. Some private employers such as child care agencies, hospitals, museums, banks and school bus driving companies can also get rap sheets. Even employers that cannot get rap sheets can conduct background checks (with your permission) that sometimes include information about convictions, and arrests that led to those convictions. Bottom line: DO NOT LIE.
Criminal Convictions

QUESTION: May I be refused a job because I have been convicted of a crime?

ANSWER: It depends. Employers may - and usually will - ask about your past convictions for criminal offenses. However, New York law makes it illegal for both public and private employers to deny you a job (or fire you from an existing job), or for a licensing agency to deny you an occupational license, based solely on your criminal record unless 1) there is a direct relationship between your past conviction(s) and the job you want; or 2) hiring you would involve an unreasonable risk to property or to the safety of others. Note: This law does not apply to small private employers with fewer than four employees or to law enforcement agencies.

QUESTION: Does the type of criminal offense on my record affect the job I can get?

ANSWER: Yes, it may. As noted above, you may legally be refused employment (or an occupational license) if there is a direct relationship between a crime for which you have been convicted and the type of job (or license) you want, or if hiring you would involve an unreasonable risk to property or the safety of others. There is no easy way to know whether your past criminal conduct is directly related to the job you are seeking or if your criminal record suggests that you are an unreasonable risk. In deciding these issues, employers and licensing agencies must consider the following questions:

• Does your conviction history affect your ability to perform the job duties and responsibilities?

• How long ago was your last conviction?

• What was your age at the time of conviction?

• What was the seriousness of your offense or offenses?

• Does the employer have a particular need to protect property, the general public or specific groups of individuals?
• What specific information have you provided about your rehabilitation (in other words, the good things you have achieved and the positive changes you have made since your last criminal conviction) or good conduct?

• Do you have a “Certificate of Relief from Disabilities” or a “Certificate of Good Conduct?” (These certificates are discussed below.)

QUESTION: Am I entitled to know if my conviction record is the reason I was denied a job?

ANSWER: Yes. In New York, if you have been convicted of a crime, and you have been denied a job, you may request that the employer tell you in writing why you were denied that job. New York law requires that the employer provide you with this information within 30 days of your request.
QUESTION: How can I show employers that I have been rehabilitated - in other words, made positive changes and achievements since my last conviction?

ANSWER: See the publication, "How to Gather Evidence of Rehabilitation," available for free from the Legal Action Center (contact information on last page of this Guide).

One way for you to demonstrate to an employer that you have been rehabilitated is to obtain either 1) a Certificate of Relief from Disabilities; or 2) a Certificate of Good Conduct. If you obtain one of these Certificates, and present a copy of the Certificate to a prospective employer, this Certificate must be accepted by the employer as evidence that you have been rehabilitated.

QUESTION: Does having a Certificate of Relief from Disabilities or a Certificate of Good Conduct guarantee me a job or an occupational license?

ANSWER: No. The Certificate creates a "presumption of rehabilitation" only. A Certificate will remove automatic bars to certain types of jobs and occupational licenses. Once the automatic bars are lifted, the licensing agency or employer must consider your application on an individual basis. You may still be refused a job based on your convictions if they are job-related or if the employer believes that employing you will create a risk to persons or property.

QUESTION: Am I eligible to receive a Certificate of Relief from Disabilities or a Certificate of Good Conduct?

ANSWER: The type(s) of conviction(s) on your record determine your eligibility for a Certificate of Relief from Disabilities and a Certificate of Good Conduct.

If you have only one felony conviction and did not serve a year or more in state prison for that conviction, and if you have any
number of misdemeanors, you may apply for a Certificate of Relief from Disabilities. Keep in mind:

• The number of your misdemeanor convictions does not affect your eligibility for a Certificate of Relief from Disabilities.

• A guilty plea counts as a conviction.

• You must apply for and get a separate Certificate of Relief from Disabilities for each of your convictions.

If you have two or more felony convictions, or served a year or more in state prison, you may apply for a Certificate of Good Conduct. Keep in mind:

• There is a strict waiting period for a Certificate of Good Conduct.

  • If your most serious conviction was a class "C", "D" or "E" felony, you need to wait at least 3 years from the date of your last conviction, payment of fine, or release from prison.

  • If your most serious conviction was a class "A" or "B" felony, you need to wait at least 5 years from your last conviction, payment of fine, or release from prison.

• One Certificate of Good Conduct will cover all of your convictions.

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QUESTION: How do I apply for a Certificate of Relief from Disabilities?

ANSWER: The application procedure depends upon your criminal record:

• If you were convicted of any number of misdemeanors or if you were convicted of only one felony, but did not serve time in state prison, then you must apply for your Certificate by contacting the clerk of the court in which you were convicted.
Each court has a different procedure. Ask the clerk of the court to explain these procedures to you. Remember that you will need to apply for a Certificate for each conviction.

- If you were convicted of more than one felony and served time in prison or if your case was in federal court or the court of another state and you are now a resident of New York State, then you must apply to the New York State Board of Parole to get a Certificate of Relief for your conviction. (If you are on parole, request a Certificate of Relief from Disabilities from your parole officer.)

  - **Step 1:** Mail a request for an application to:
    Certificate Review Unit
    NY State Division of Parole
    97 Central Avenue
    Albany, NY 12206
    (518) 485-8953

Or you can get a request on-line at
http://parole.state.ny.us/PROGRAMrestoration.asp

  - **Step 2:** Complete the application and return it to the Certificate Review Unit at the above address.

  - **Step 3:** The Certificate Review Unit will assign your application to a local parole officer who will investigate your character or rehabilitation.

  - **Step 4:** The Parole Board will make a final decision about your Certificate application.
QUESTION: How do I apply for a Certificate of Good Conduct?

ANSWER: Once the 3 or 5 year waiting period has passed, follow these steps to obtain a Certificate of Good Conduct:

- **Step 1:** Mail a request for an application to:

  Certificate Review Unit  
  NY State Division of Parole  
  97 Central Avenue  
  Albany, NY 12206  
  (518) 485-8953

  Or you can get a request on-line at  
  http://parole.state.ny.us/PROGRAMrestoration.asp

- **Step 2:** Complete the application and return it to the Certificate Review Unit at the above address.

- **Step 3:** Your application will be assigned to a parole officer in the county where you live. The parole officer will then conduct an investigation. After the investigation is complete, the parole officer will send his or her recommendation to the Parole Board.

- **Step 4:** You will be notified of the Parole Board's decision by mail.

Keep in mind: The process to obtain a Certificate of Good Conduct takes at least six months. If you need your Certificate faster, at the time you send your completed application, you should send a letter to the Parole Board explaining why you need it faster.
Getting, Reviewing and Correcting A Rap Sheet

The New York State Division of Criminal Justice Services (DCJS) keeps a file of all criminal records in New York State. Every person who has been arrested and fingerprinted in New York State has a permanent “rap sheet” on file at DCJS. DCJS records include information about arrests and charges, whether the person was convicted or not. However, information about arrests that did not lead to conviction, as well as information about sealed cases (dismissals, acquittals, sealed non-criminal convictions) will appear only on the rap sheet sent to the individual him or herself. They will NOT appear on rap sheets sent to those employers eligible to receive them (see page 3 above).

DCJS records sometimes contain mistakes: they may include information about convictions that should be sealed and arrest warrants that were actually vacated, for example. They may also report arrests without reporting the final disposition of a case, making it look as though you still have an open charge when in fact the case was ended years ago. You should get a copy of your rap sheet so you can take steps to correct the record before an employer receives it. Another reason to get a copy of your rap sheet is so that you will have the dates, charges and court available to help complete an application accurately and prepare yourself for interview questions.

QUESTION: How do I get a copy of my rap sheet?

ANSWER: Anyone can get his or her New York State rap sheet by requesting a “Record Review Packet” from DCJS. You will be required to submit a complete set of fingerprints and pay a $50.00 fee with the completed packet. If you are on a fixed income (e.g. receive public assistance or SSI) or are otherwise unable to pay the fee, you may request that it be waived. Information on how to make this request is included in the materials you will receive from DCJS.

You can get a Record Review Packet by calling (518) 485-7675, by e-mailing a request to RecordReview@dcjs.state.ny.us or writing to the address below:

Record Review Unit
New York State Division of Criminal Justice Services
4 Tower Place
Albany, New York 12203-3764
You must provide your complete name and mailing address in your request for a Record Review Packet.

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QUESTION: How do I correct my rap sheet?

ANSWER: To correct mistakes or change information on your rap sheet, you will need to provide DCJS with evidence of the correct information.

• To correct arrest information, such as the charges or the date of the arrest, you must go to the law enforcement agency that arrested you, and request that it submit the correct information to DCJS. DCJS will accept this information directly from the law enforcement agency only.

• To correct information on your rap sheet about a conviction, you must contact the court where the charge was prosecuted to obtain a certified copy of a Certificate of Disposition for the charge. Certificates of Disposition list the date of arrest, the charge(s), the docket number of the case, and the disposition. You will need to submit the Certificate of Disposition (that contains the correct information) to DCJS with the completed review packet.

• To correct entries about warrants that you believe were actually vacated, visit the clerk’s office of the court that issued the warrant. They will direct you to the proper party. WARNING: be sure your warrant was actually vacated! You may have an open warrant you do not remember. In order to be sure, contact the attorney who represented you in the case. If you were represented by a Legal Aid attorney or public defender, contact the Legal Aid Society or public defender agency and ask them to help you.

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QUESTION: How do I have information on my rap sheet sealed or removed?

ANSWER: Only cases that were terminated in your favor (dismissals, acquittals, declined prosecutions, grand jury dismissals, nolle prosequis, adjournments in contemplation of dismissal where the “adjourned” period has expired) or convictions for non-
criminal offenses (e.g. violation-level offenses such as disorderly conduct) may be sealed. Generally this sealing happens automatically, though sometimes there are mistakes. And if the case is old - if a dismissal or sealable conviction was entered before the mid-1980s - you may need to make a motion to seal.

If you need to make a motion to seal a case, you should contact the clerk’s office of the court where the charge was prosecuted and ask for assistance in filing a sealing motion. An attorney or advocate can also help you with such a motion. Once the court enters the order sealing the case, the clerk will contact DCJS. You can also get a certified copy of the order and send it to DCJS yourself.

Enforcing Your Rights

If you believe your rights under New York’s antidiscrimination laws have been violated - for example, if you were improperly denied a job based on your criminal record - there are steps you can take.

- If you were denied a job by a private employer, you may file a complaint either with the New York State Division of Human Rights or in state court. The deadline for filing with the Division of Human Rights is one year from the denial of the job or other discriminatory act. The deadline for filing a lawsuit in court is three years from the denial of the job or other discriminatory act. If you were rejected for a job in New York City, you can also file a complaint with the New York City Commission on Human Rights within one year of the rejection or file a lawsuit in state court claiming a violation of the New York City Human Rights Law within three years of the rejection. (You cannot file a complaint with both the NY State Division of Human Rights and the NY City Commission on Human Rights.)
Although the time period for filing a claim of discrimination with the State Division of Human Rights and the City Commission on Human Rights is shorter than for filing a lawsuit in court, there are certain advantages to filing with these agencies. You do not need a lawyer to file with the state or City agencies. Instead, these agencies will conduct an investigation of your claim and, in many cases, try to settle your claim with the employer. If the investigator is not able to settle your claim and the investigator finds that it is likely that you were discriminated against based on your conviction history, an attorney will be assigned to present your case at a hearing before an Administrative Law Judge. After a hearing, the Administrative Law Judge will decide whether he or she believes discrimination occurred and make a recommendation to the Commissioner of the agency as to an order that should be entered. If the Administrative Law Judge finds that you have been discriminated against, the Judge can recommend that you be given the job and awarded back pay.

- If you were denied a job or an occupational license by a public employer or government agency, you must file an Article 78 complaint in New York State Supreme Court. The deadline for filing such a complaint is only **four months after the denial**. The Supreme Court has forms for you to file a complaint yourself, or you may seek the help of an attorney. Neither the New York State Division of Human Rights or the New York City Commission on Human Rights can accept complaints of discrimination by public employers or government agencies.
Getting More Help

QUESTION: Who can I turn to if I believe my rights have been violated or if I need more information?

ANSWER: If you believe you have been unfairly discriminated against because of your criminal record, you should consult with a lawyer. You should not hesitate to contact a lawyer simply because you do not think you can afford one. A good way to find a lawyer is to contact the New York City Bar Association’s Legal Referral Service.

- English: (212) 626-7373
- Spanish: (212) 626-7374

In addition, some legal services agencies are able to represent low-income people free of charge in employment discrimination matters.

Legal Action Center

The Legal Action Center offers advice and representation to people in New York State who face discrimination because of their criminal conviction histories, and/or their past drug or alcohol histories ,or because of HIV/AIDS. The Legal Action Center may be contacted by phone or by e-mail at:

- Legal Action Center
- 225 Varick Street
- New York, NY 10014
- Phone: 212-243-1313
- Toll free: 1-800-223-4044
- Website: www.lac.org
- E-Mail: lacinfo@lac.org
Legal Aid Society

The Legal Aid Society offers advice and representation to people in New York City who face discrimination because of their criminal conviction histories or because of HIV/AIDS. The Legal Aid Society may be contacted in person or by phone or by e-mail at:

Legal Aid Society
199 Water Street
New York, NY 10038
Phone: 212-577-3300
Fax: 212-509-8761
Website: www.legal-aid.org

South Brooklyn Legal Services

The mission of South Brooklyn Legal Services is to seek equal justice for low-income people in Brooklyn by providing a broad range of legal advocacy and information, helping empower poor people to identify and defeat the causes and effects of poverty in their communities. SBLS is a program of Legal Services NYC.

South Brooklyn Legal Services
105 Court Street, 3rd Floor
Brooklyn, NY 11201
Phone: 718-237-5500
Fax: 718-855-0733
Website: www.sbls.org

MFY Legal Services, Inc.

Founded on the principle of equal access to justice for all, MFY works in concert with community organizations to provide free civil legal assistance to those in greatest need.

MFY Legal Services, Inc.
299 Broadway, 4th Floor
New York, NY 10007
Phone: 212-417-3700
Fax: 212-417-3891
Website: www.mfy.org
Monroe County Legal Assistance Center

Monroe County Legal Assistance Center has provided free civil legal services to eligible clients in Monroe County for more than 30 years. MCLAC is an affiliate of Legal Assistance of Western New York, Inc.

Monroe County Legal Assistance Center
One West Main Street
4th Floor
Rochester, NY 14614
Phone: (585)325-2520
Fax: (585)325-2559
TDD: (585)325-2547
Website: www.lawny.org/index.php/monroe-county-legal-assistance-center
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