

REENTRY & EMPLOYMENT*

1. *An employer said it wouldn't hire me because it doesn't hire anyone with a criminal record. Is that legal?*

- No. Employers must consider each person as an individual. Refusing to hire all people with criminal records violates Title VII of the Civil Rights Law of 1964, the New York State Corrections Law Sections 750-755 (often referred to as "Article 23-A" of the Corrections Law); the New York State Human Rights Law (New York Executive Law Section 296); and the New York City Human Rights Law (New York Administrative Code Section 8-107).

2. *What do I do if an employer tells me - illegally - that I cannot be hired just because I have a criminal record?*¹

- *Private employers:* Within one year of the discrimination, you can file a complaint with the State Division of Human Rights (<http://www.dhr.state.ny.us/>). You can also file a complaint against the employer under the New York City Human Rights Law if the employer is in New York City (<http://www.ci.nyc.ny.us/html/cchr/home.html>). You have up to three years to file against the employer under the NYC Human Rights Law.
- *Public employer:* Within four months of the discrimination, you can file a lawsuit in New York state court under the State Human Rights Law and Article 23-A of the correction law. You may also be able to appeal the rejection through the state agency that rejected you (for example the Department of Health).
- For the source of the information in this section and more advice about filing lawsuits against discriminatory employers, please refer to the Legal Action Center's "Employment Discrimination and What to Do About It" available at www.lac.org and www.reentry.net/ny.

3. *How can my criminal history affect my chances at getting a job?*

- Under New York law, employers and state agencies that issue licenses cannot reject you simply because you have a criminal conviction. Instead, you may only be rejected if (1) there is a direct relationship between a conviction on your criminal record and the job or license you want; or (2) hiring you would pose an unreasonable risk to persons or property. Corrections Law Section 753 says that an employer must look at you as an individual and lays out the factors which they must consider:
 - New York's public policy promoting the employment and licensure of people with criminal histories;
 - How your conviction relates to your fitness and ability to perform the job's duties;
 - How long ago and how serious your conviction was and your age at the time;
 - The employer's or agency's legitimate interest in protecting people and property;

* This handout is an excerpt from *The Consequences of Criminal Charges: A People's Guide*, published by The Bronx Defenders. It is for informational purposes only and is NOT a substitute for legal advice. It is up to date as of October 2010.

¹ All information in this section is from the Legal Action Center's "Employment Discrimination and What to Do About It"

- Your evidence of rehabilitation and good conduct; and
- A Certificate of Relief from Disabilities or Certificate of Good Conduct, which create a presumption of rehabilitation.

4. The job I want requires an employment license, but I was told I couldn't get one because of my criminal record. Is that true?

- If you want to apply for an occupational license but you are barred based on your criminal history, you can apply for a Certificate of Relief from Disabilities or Certificate of Good Conduct to overcome the automatic bar.
- To find out if you will face an obstacle to getting a particular employment license based on your criminal history, check out the New York State Occupational Licensing Survey at: http://lac.org/doc_library/lac/publications/Occupational%20Licensing%20Survey%202006.pdf. Some of the common ones that have criminal history bars are private security guard, accountant, bus driver, real estate broker, nurse, and civil service employees of New York City.
- If you are looking for a job in the healthcare field, this reference chart from the Legal Action Center (<http://www.reentry.net/ny/library/attachment.90366>) has information about bars to employment regulated by the Department of Health (DOH), Office of Mental Health (OMH) and Office of Mental Retardation & Developmental Disability (OMRDD).

5. I want to be a police officer, fire fighter, court officer, notary public, or hold any other public office. Can I hold these jobs if I have a criminal record?

- The Public Officer's Law defines many occupations as "public office," but public employment (meaning a job working for the state or the city) does not necessarily mean public office. Some jobs in public employment may have fewer barriers to employment based on criminal convictions than others.
- There are many examples of public offices. Some of the most common include elected and appointed office, such as the Governor, legislators, judges, and local supervisors and commissioners. Police officers, corrections officers, parole and probation officers, district attorneys, and members of local school boards are also considered public officers.
- Certain convictions can permanently disqualify you from holding some public offices:
 - Felony convictions bar you from appointment to the town police department and New York City police force. Certain misdemeanor convictions may also make you ineligible for membership in a law enforcement agency.
 - If you are a member of the legislature or any officer or employee of the legislature and you are convicted of bribery-related crimes you are permanently disqualified from holding public office.
 - If you are convicted of arson in any degree you are not eligible for election or appointment to the office of fire district commissioner, treasurer, or secretary.
 - Section 3 of the Public Officers Law states that only people currently eligible to vote may serve as appointed police and peace officers. This means that you may not serve as an appointed police or peace officer if you are in prison or on parole (or not a U.S. citizen, or under 18 years of age.)
 - If you have a felony conviction you are disqualified from serving as a notary public.

- Certain convictions require you to give up a public office you currently hold, but may not disqualify you from holding a future public office. If you currently hold a public office and are sentenced to state prison you must give up the office that you currently hold.
- If you fall into one of these categories, a Certificate of Good Conduct may make you eligible for the office you want to hold, but a Certificate of Relief will not. For some public offices, however, even a Certificate of Good Conduct will not work, and you will not be able to apply for that office.
- If you have any questions regarding your eligibility for a certain type of employment or license, consult an attorney to help you determine whether your desired employment is a public office; whether the law imposes bars to the type of employment or license; and whether you need a Certificate of Relief from Disabilities or Certificate of Good Conduct.

6. *When I go for a job interview, what can the employer ask me about my criminal record?*

- An employer **may not** ask
 - Have you ever been arrested?
 - Have you ever been convicted of a violation or other non-criminal offense?
 - Have you ever been adjudicated as a youthful offender?
 - Do you have a history of drug or alcohol dependence?
 - Are you now, or have you ever been, treated for drug or alcohol dependence?
- An employer **can** ask you
 - Have you ever been convicted of a crime?
*Only felonies and misdemeanors are crimes. A violation is not a crime. If you have only been convicted of a violation (assuming it has been sealed, see below), you are legally allowed to answer that you have not been convicted of a crime.
 - Do you have any convictions on your record? Answer *only about convictions that are not sealed* – felonies, misdemeanors, and violations that haven't been sealed. All violations--except for loitering in "a deviant manner" or loitering "for prostitution"—should be sealed on your criminal record one year after the conviction date unless you waived your sealing right as a condition of your plea.
* Felonies and misdemeanors are convictions, and you must disclose them even if you have a Certificate of Relief from Disabilities or Certificate of Good Conduct. Violations are also convictions, but they are sealed under New York State law (unless a court ordered that the case not be sealed when you were sentenced).
 - Do you use illegal drugs?
 - Do you currently have a mental or physical condition that might prevent you from doing the job?

7. *What can I do to increase my chances of getting a job even though I have a criminal history?*

- Review your credit report and rap sheet and make sure that there are no errors before you apply for your job.
- Get a Certificate of Relief from Disabilities or a Certificate of Good Conduct. These show potential employers that according to New York State, you have been rehabilitated and that you are not likely to commit another offense.

- Bring the employer letters of reference from people who you think an employer would be interested in hearing from, such as former employers, counselors, and parole or probation officers. These are much more helpful than letters from family members.

8. I was arrested and have been suspended from work. What should I do?

- Unfortunately, New York is an “employment at will” state. This means that any employee who is not in a union can be suspended or fired at any time, including if you were arrested but have not yet been convicted of anything.
- If you are in a union, contact your union representative right away to find out whether you have any special rights or protections under your union contract.
- Tell your attorney where you work and ask him or her to find out whether a conviction could affect your ability to return to your job. You can also check the Legal Action Center’s Occupational Licensing Survey, available at www.lac.org and www.lawhelp.org/ny.

9. Where can I find more resources?

- The Legal Action Center publishes a manual called “Employment Discrimination and What to Do About It” available at:http://lac.org/doc_library/lac/publications/employment_discrimination.pdf
- Legal Action Center also publishes a shorter booklet called “Are You...” with basic information about your rights as a jobseeker with a criminal record, HIV/AIDS, or a history of drug or alcohol use. It is available at:
http://lac.org/doc_library/lac/publications/LAC--AreYou.pdf
- An excellent resource to help you understand your rights as they pertain to your juvenile and criminal records and employment is Know Your Rights: Understanding Juvenile & Criminal Records and Their Impact on Employment in New York State, by Laurie Parise, which is available at: http://www.lac.org/doc_library/lac/publications/kyr.pdf.pdf
- The New York Public Library publishes an online resource called “The Job Search” that includes tips on how you can prepare for the job search before leaving prison, where to look for jobs, resume-writing, and more. Available at:
http://www.nypl.org/branch/services/connections/job_search_table.html
- Visit www.lawhelp.org/ny for Know Your Rights and legal referral information.