

Proposed Amendment to Article 23A of Correction Law § 750-755 to Limit Unfair Discrimination Against Persons Previously Convicted of One or More Criminal Offenses.

ARTICLE 23-A
LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY
CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

Section 750. Definitions.

751. Applicability.

752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.

753. Factors to be considered concerning a previous criminal conviction; presumption.

754. Written statement upon denial of license or employment.

755. Enforcement.

§ 750. Definitions. For the purposes of this article, the following terms shall have the following meanings:

(1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

(2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.

(3) "Direct relationship" ~~means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought.~~ requires a substantial and immediate connection between the crime or offense and the functions and responsibilities pertaining to the right, opportunity, or job in question.

(4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

§ 751. Applicability. The provisions of this article shall apply to any application by any person for a license or employment who has previously been convicted of one or more criminal offenses, and to any license or employment held by any person whose conviction of one or more criminal offenses preceded such employment or granting of the license in this state or in any other jurisdiction, to any public agency or private employer for a license or employment, except where a mandatory forfeiture, disability or bar to

employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct.¹

§ 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. 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 ~~applicant's~~ 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 applicant 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~~
~~—(2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.~~

§ 753. Factors to be considered concerning a previous criminal conviction; presumption. 1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
- (b) The specific duties and responsibilities necessarily related to the license or employment sought.
- (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (e) The age of the person at the time of occurrence of the criminal offense or offenses.
- (f) The seriousness of the offense or offenses.
- (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the

¹ This amendment will not protect individuals who lie on their applications and whose employers later uncover their criminal histories. Courts have long held that applicants who lie or withhold information on their applications have no protections under Article 23-A, and this reasoning would extend to current employees. Nor does it prevent employers from taking action if an employee is convicted after obtaining employment.

applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

§ 754. Written statement upon denial of license or employment or termination of an individual . At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reason for such denial, including how the licensing agency or employer evaluated and weighed each of the eight factors enumerated in section 753(1) in deciding to terminate an individual whose conviction of one or more criminal offenses preceded such employment or to deny a license or employment or a promotion ~~the reasons for such denial.~~

§ 755. Enforcement. 1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive law, and, concurrently, by the New York City Commission on Human Rights.

Need for Amendment

With the advent of the computer age and all the other means by which criminal history information can be obtained, employers have easy access to criminal history information. Once this information is obtained, employers can act (and have acted) at will to terminate employees on the basis of their criminal histories, even if there is no direct relationship between the criminal offense(s) and the job and no unreasonable risk to the safety to the public or property, the criteria upon which an employer can deny a job to an applicant. (See § 752 of the Corrections Law.)

It is inconsistent to require employers to individually consider each person with a criminal history who applies for a job and make it illegal to deny that person a job unless specific criteria are met, but not extend that protection to individuals who are already employed. New York has a strong, longstanding policy of encouraging the employment of qualified individuals with criminal records. Sections 750 through 755 of the Correction Law should be amended to include current employees and license holders so that its protections are implemented consistently, evenly and fairly across the board.¹

¹ This amendment will not protect individuals who lie on their applications and whose employers later uncover their criminal histories. Courts have long held that applicants who lie or withhold information on their applications have no protections under Article 23-A, and this reasoning would extend to current employees. Nor does it prevent employers from taking action if an employee is convicted after obtaining employment.