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Labor and Employment Alert

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How does New York's Clean Slate Act affect employers?

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New York's new Clean Slate Act will limit employers' ability to obtain criminal conviction history on applicants for employment.



What's the impact?

- The Act does not prohibit employers from conducting pre-employment criminal background screenings.
- The Act seals and makes inaccessible certain criminal convictions that previously would have appeared on an applicant's background check report.
- Certain criminal convictions are exempt from the automatic sealing provisions of the Act; however, employers will have less information on which to base a hiring decision.

On November 16, 2024, Gov. Hochul signed into law the Clean Slate Act, expanding anti-discrimination protections for certain individuals with prior criminal convictions. The Act

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automatically seals many types of criminal conviction records, thereby restricting the information employers may obtain about applicants during pre-employment screenings and inquiries.

What will change under the Clean Slate Act?

Under the Act, certain traffic violations, misdemeanors, and felonies will be automatically sealed after meeting certain requirements:

- / The conviction occurred at least three (3) years ago (for traffic violations and misdemeanors) or eight (8) years ago (for felonies), calculated from the date of sentencing or release from confinement, whichever is later;
- / During that period of time, the individual accrued no additional criminal charges or convictions in New York State;
- / The individual has not accrued any felony charges or convictions in the preceding eight (8) years in any jurisdiction;²
- / The individual completed any required probation or parole; and
- / The conviction is not a sex offense, a sexually violent offense (such as rape), or a Class A felony, such as murder (excluding certain drug-related Class A felonies).

Sealed records will not appear on a criminal background check report. As a result, most employers will not see this information as part of a pre-employment screening. The Act does, however, allow access to sealed convictions for certain specialized purposes, such as:

- / Law enforcement purposes;
- / Licensing or employment in specific industries that require criminal background checks;
- / Employment where fingerprint-based background checks are permitted or required;
- / Employment involving work with certain groups, including children, adolescents, the elderly, and other vulnerable populations;
- / By the State Education Department for professional licensing and for investigations of professional misconduct; and
- / When an individual seeks a gun license or commercial driver's license.

Clean Slate Act's impact on employers

The Act will have a significant impact on employers who conduct pre-employment criminal background screenings. Although those screenings are still permitted, they may exclude information regarding an applicant's past criminal convictions, including convictions that have a

² The Act carves out exceptions for felony charges in other jurisdictions related to reproductive or gender-affirming care or cannabis possession that would not constitute a felony under New York State law.

direct relationship to the work performed. Convictions for the most serious offenses, recent convictions, and convictions for which the applicant is still on probation or parole will still appear.

The Act also amends New York State's Human Rights Law to prevent employers from asking applicants about sealed convictions or from taking adverse action based upon a sealed conviction.³ Applicants asked about sealed convictions may lawfully respond as if the conviction did not occur. Accordingly, applicants whose convictions have been sealed may lawfully answer "No" if asked on the employment application, "Have you ever been convicted of a crime?"

For unsealed convictions, the provisions of New York's Correction Law still apply: employers may not use an applicant or employee's unsealed criminal conviction as the basis for an employment decision unless there is a "direct relationship" between the criminal offense and the specific employment or the conviction presents "an unreasonable risk to property or to the safety or welfare of specific individuals or the general public."

Looking ahead

The Act will take effect on November 16, 2024. The New York State Office of Court Administration will have up to three (3) years to seal eligible conviction records that pre-date the enactment of the Act.

Employers should consult with counsel to evaluate their hiring and screening policies in anticipation of the Act's effective date. Employers also should work with counsel to formulate policies addressing criminal background checks that reveal eligible convictions during the Office of Court Administration's three-year grace period.

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³ Note that under state law, employers may lawfully ask applicants about unsealed criminal convictions that did not result in an order adjourning the proceeding in contemplation of dismissal or youthful offender adjudication. However, several municipalities in New York State have local laws prohibiting employers from asking about any criminal convictions (sometimes referred to as "Ban the Box" laws). The Clean Slate Act does not affect those more restrictive local laws.