



NEW YORK STATE AMENDMENTS

TO ITS GENERAL BUSINESS LAW AND LABOR LAW
RELATED TO ARTICLE 23-A OF NEW YORK CORRECTION LAW

Effective February 1st, 2009

Bill 7638-A:

<http://assembly.state.ny.us/leg/?bn=S07638&sh=t>

Correction Law Article 23-A:

<http://www.labor.state.ny.us/agencyinfo/PDFs/CorrectionLaw%20Article%2023-A%204.pdf>

Posters should be available free of charge by the end of the year.

Please contact the New York State Division of Human Rights at (718) 741-8400

Or visit: <http://www.dhr.state.ny.us/>

In an effort to encourage employment of otherwise qualified applicants those with conviction records, the state of New York recently amended its general business and labor laws relating to background checks and notices to applicants and employees of their rights. The new law is effective February 1, 2009.

Among other things, New York law requires that public agencies and private employers provide certain notices in connection with employment applications involving persons convicted of criminal offenses regardless of whether the conviction was in New York or another state. The notices are based on hiring requirements that are found in Article 23-A of the Correction Law. Article 23-A applies to any person, company, corporation, labor organization or association that employs more than ten people, but does not apply where there is a specific legal prohibition on hiring applicants with a criminal history.

1- POSTING OF ARTICLE 23-A OF THE CORRECTION LAW IN THE WORKPLACE

New York employers must post a copy of Article 23-A of the Correction Law in a **visually conspicuous manner in an accessible location** in the workplace.

2- AMENDMENT IN CONNECTION WITH ANY TYPE OF CONSUMER REPORTS CONTAINING CRIMINAL CONVICTION INFORMATION

When a consumer report received by an employer contains criminal conviction information, **the employer must provide** to the applicant or employee who is the subject of the report, a printed or electronic **copy of Article 23-A of the New York Correction Law**, which governs the employment of persons previously convicted of one or more criminal offenses.

- Although New York employers are not required by law to do so, Acxiom Information Security Services recommends providing a copy of Article 23-A with any consent to a consumer report. An acknowledgment of receipt for Article 23-A is also encouraged.

3- AMENDMENT IN CONNECTION WITH INVESTIGATIVE CONSUMER REPORTS (e.g., when an employer orders "Character References" or "Extended Employment References")

No person may procure or cause to be prepared an "investigative consumer report*" on any consumer unless he has first provided the consumer with notice of the procurement or preparation, and has first received authorization from the consumer for preparation or procurement of an investigative consumer report. The notice must be in writing if a written application is made by the consumer, but the authorization notice can be delivered orally or in writing in any other circumstances.

The authorization notice must inform the consumer that an investigative consumer report may be requested and the consumer, **upon written request**, will be informed **whether or not an investigative consumer report was requested**, and if such report was requested, **the name and address of the consumer reporting agency** to whom the request was made. The consumer must also be informed he may **inspect and receive a copy of the report** by **contacting the consumer reporting agency**.

Additionally, **if an investigative consumer report was requested with respect to an offer of employment** the person or entity requesting the report must also include in the authorization notice **a copy of Article 23-A of the Correction Law** governing the licensure and employment of persons previously convicted of criminal offenses.

(*) NY General Business Law § 380-a (d): The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information.

FACTORS TO BE CONSIDERED CONCERNING A PREVIOUS CRIMINAL CONVICTION Article 23-A Section 753

Article 23-A Section 753 of New York Correction Law requires employers to consider and balance a number of factors before terminating or refusing to hire individuals with a prior criminal conviction, including:

- The specific duties and responsibilities necessarily related to the employment sought or held by the person.
- 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.
- The time that has elapsed since the occurrence of the criminal offense or offenses.
- The age of the person at the time of occurrence of the criminal offense or offenses.
- The seriousness of the offense or offenses.
- Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- The legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public.
- The public policy of the state of New York to encourage the employment of persons with prior criminal convictions

NOTE: The employer must also give due consideration to certificates of relief from disabilities or certificates of good conduct. Such certificates create a presumption of rehabilitation. Moreover, the New York State Legislature amended § 296 of the Human Rights Law. There is now a rebuttable presumption in favor of excluding from evidence the prior incarceration or conviction of an employee in a case alleging that the employer was negligent in hiring or retaining an applicant or employee, or supervising a hiring manager if the employer can show that it undertook a good faith, reasonable, determination that the factors outlined in the Article 23-A §753 favored a decision to hire the employee (or retain the employee, if the employer learned of the conviction after hire).

WRITTEN STATEMENT UPON DENIAL OF LICENSE OR EMPLOYMENT Article 23-A Section 754

At the request of any person previously convicted of a criminal offense who has been denied a license or employment, a public agency or private employer must provide, within thirty days of the request, a written statement setting forth the reasons for the denial.

**SHOULD YOU HAVE ANY QUESTIONS
PLEASE CONTACT  COMPLIANCE DEPARTMENT:**

The information contained herein is presented as general education information and is not intended to be legal advice, either express or implied. You should consult with legal counsel regarding all employment law matters.



NEW YORK CORRECTION LAW

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, 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 at any public or private employer, who has previously been convicted of one or more criminal offenses in this state or in any other jurisdiction, and to any license or employment held by any person whose conviction of one or more criminal offenses in this state or in any other jurisdiction preceded such employment or granting of a license, 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. Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.

§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 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 individual 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 held by the individual; or

(2) the issuance or continuation of the license or the granting or continuation 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 or held by the person.

(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 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. 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 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.