

Obtaining Employment with a Criminal Record

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Can I be Denied Employment Because I Have a Criminal Record?

- Under New York State law, it is illegal for an employer to deny a person a job just because of their criminal convictions, unless:
 - The circumstances of the conviction(s) have a direct relationship to the duties and responsibilities of the job.

OR

- Hiring someone would create an unreasonable risk to property, or to the health and safety of certain people or the general public.

* As of February 8, 2020, The Human Rights Law will apply to all employers within New York State, even those with fewer than four employees.

What do I have to Disclose if Asked by a Potential Employer?

Unsealed Criminal Convictions Yes

Sealed Criminal Convictions No

Arrests Yes, but only arrests that led to a conviction AND the conviction has not been sealed.

| | |
|---------------------|-----|
| Pending Arrests | Yes |
| Unsealed Violations | Yes |
| Sealed Violations | No |

*This chart does not apply to jobs in law enforcement.

*Unlike felonies and misdemeanors, which are criminal convictions, violations and infractions are considered non-criminal convictions under New York State law.

What can an employer not ask me?

- An employer cannot ask an applicant, or an employee, if they have ever, in the past, been arrested or if they have ever had a criminal accusation filed against them in court.
- An employer cannot ask an applicant, or an employee, for information about an arrest or accusation that is no longer pending.
- An employer cannot ask an applicant, or an employee, if they have any sealed criminal records or about youthful offender adjudications.

Certificates of Rehabilitation & Sealing

- A Certificate of Rehabilitation is a factor an employer must consider when evaluating your application for employment. As there are limited ways to seal a criminal record in New York it may be helpful to obtain a Certificate of Rehabilitation. New York State allows individuals with criminal records to apply for certificates of rehabilitation, and in some specific instances sealing. In order to find out if you qualify for either a certificate or sealing you should obtain a copy of your RAP sheet and review it.

What are Certificates of Rehabilitation?

- A Certificate of Rehabilitation creates the presumption of rehabilitation to the specified offense. Certificates are a useful tool when applying for a job.
- Certificates can remove the automatic disqualifications required by law for certain jobs or licenses.

- Having a Certificate does not prevent a potential employer from considering your convictions. However, employers must also consider the Certificate when basing an employment decision on your background check.
- A certificate is not a pardon and it doesn't seal or expunge the record of your convictions. You are still required to list your convictions on job applications when asked to do so.

Types of Certificates of Rehabilitation

- Certificates of Relief from Disabilities
- Certificates of Good Conduct

The main difference between the two is who is eligible to apply for each. Your criminal record will determine which certificate you can apply for.

What is Sealing?

- Sealing a conviction means that any record of the conviction will be removed from access by the general public. For example, a sealed conviction would not appear on a search for most landlords or employers.

Who Can See a Sealed Conviction?

Even if the conviction is sealed, certain entities can still access the records. This includes:

- The person with the sealed record
- Certain state and federal agencies
- Agencies associated with firearms licenses
- Prospective employers where an application is for employment as a police officer or peace officer.

Why Should Someone Seek to Have Their Convictions Sealed?

- Criminal records can create barriers in every aspect of a person's life, including employment, housing, education, immigration status, and family life. Sealing a conviction can help a person move forward with their life and obtain the employment, housing, and other things needed to become truly rehabilitated.

LawNY® Reentry Services

LawNY® serves individuals reentering society from incarceration and those with criminal

records. Priority is given to those seeking to obtain or maintain employment, including but

not limited to, the following issues:

- Denial or Termination of Employment
- Due to Criminal Record
- Denial or Ineligibility for Licensure,
- Clearances, or Contracts Due to Criminal Record
- Disqualification from Higher Education Due to Criminal Record
- Rap Sheet Corrections
- Certificates of Rehabilitation

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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