

**NOTICE UNDER NEW YORK CORRECTION LAW
ARTICLE 23-A
LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY
CONVICTED OF ONE OR MORE CRIMINAL OFFENSES**

Overview: Effective February 1, 2009, an amendment to Sections 380-c and 380-g of the New York General Business Law (GBL) imposes additional requirements upon current and prospective employers and consumer reporting agencies (CRAs).

GLB Section 380-c requires a "notice in writing if a written application is made by the consumer, or may be in writing or oral in all other circumstances..." that: 1) a consumer report may be requested on the consumer, and if so, 2) the name and address of the CRA to whom the request was made, and 3) the consumer may inspect and receive a copy of the report by contacting the CRA. The additional requirement under this amendment provides that "if the consumer requests a copy of the report, he/she shall also be provided with a copy of Article 23-A of the Correction Law."

When a consumer report contains criminal conviction information, the employer or prospective employer shall provide the subject (consumer) a "...printed or electronic copy of Article 23-A of the Correction Law..." The New York State Labor Law is also amended by adding Section 201-f, which requires "posting regulations on employment of persons previously convicted of one or more crimes... in a place accessible to its employees and in a visually conspicuous manner, a copy of Article 23-A of the Correction Law...".

§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 is 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 752 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 752 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 78 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 15 of the executive law, and, concurrently, by the New York city commission on human rights.