

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with greenery and a building.

BUSINESS IN 2024

WEEKLY WEBINAR SERIES



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Clean Slate Act



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Clean Slate Act

- Newly passed New York State law that seals the record of some convictions
- Effective November 16, 2024

What will be sealed?

What will be sealed?

- Misdemeanors
- Driving While Ability Impaired by Alcohol (DWAI) traffic infraction
- Felonies

- *Subject to exceptions!*

Law imposes a “waiting period” on a conviction before the record is eligible for sealing

- Misdemeanors: **3 years**
- Driving While Ability Impaired by Alcohol (DWAI) traffic infraction: **3 years**
- Felonies: **8 years**
- Measured from release (or sentencing if no incarceration)
- If still on probation, parole or post-release supervision, no sealing until complete
- If convicted again within the waiting period, clock resets for all unsealed crimes
- If convicted after sealing, previously sealed records are *not* unsealed

**Are there some convictions
that will not be sealed?**

Convictions that will not be sealed

- Out of state convictions
- Federal convictions
- Sex offenses (defined consistently with Sex Offender Registration Act)
- Class A felonies (except for drug possession and sale), such as
 - First degree murder
 - First degree arson
 - Terrorism

How does sealing work?
**Do we, as an employer, have
to do anything?**

How does sealing work?

- Employers play no role in sealing process, but...
- “Automatic” is a misnomer
- NYS Unified Court System must create systems and processes to ensure the convictions get sealed at the right time
 - Law gives the court system three years to do this

**Can we still ask someone if they
have been convicted of a crime?**

Can we still ask someone if they have been convicted of a crime?

- *Yes, but...*
 - If a conviction has been sealed, they can truthfully answer “no.”
 - What if this falls in the 3-year time period between the law’s effective date and the completion of sealing by the courts?
 - Beware of “Ban the Box” jurisdictions
 - Municipal/local level including: Buffalo, Rochester, Syracuse ordinance
 - Westchester County, Albany County, Suffolk County
 - NYC Fair Chance Act (amends NYCHRL)

NYC Fair Chance Act

- Before conditional job offer, employers **cannot**:
 - Ask about applicants' about criminal history, open criminal cases, until after a conditional offer of employment is extended.
 - Ask applicant to authorize background check or attempt to discover whether applicant has arrest or conviction history before conditional offer.
- Prohibits any reference to arrest or conviction history, or background checks, when advertising for position, e.g.
 - “no felonies”
 - “background check required”
- Take adverse action against an employee (or independent contractor) with a pending arrest or conviction until the employer reviews, analyzes, and determines that there is a “direct relationship” between the alleged conviction (underlying conduct) and the job, or that continuing to employ that person in that capacity would “involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.”
- Limited Exceptions

Can we still run a criminal background check?

Can we still run a criminal background check?

- *Yes, but...*
 - Convictions that were sealed by the Office of Court Administration will not appear
 - *Must provide a copy (or ensure the provision of a copy) of the report every time, together with a copy of Corrections Law Article 23-a*

Corrections Law Article 23-A

- Factors to consider:
 - Public policy
 - Specific job duties and responsibilities
 - Bearing on applicant's fitness to perform duties
 - Seriousness of conviction history
 - Time elapsed
 - Age at time of offense
 - Evidence of rehabilitation
 - Interest of employer in protecting property, safety and welfare of individuals and the general public
- * Presumption of rehabilitation if candidate has certificate of relief from disabilities or certificate of good conduct

Corrections Law Article 23-A

- A person who has been convicted of a crime who is denied employment is entitled upon request to a written statement as to the reason(s) for the denial of employment

**Do we need to change how we treat
criminal convictions that are not sealed
and appear on an applicant's
background check?**

Do we need to change how we treat criminal convictions that are *not* sealed and appear on an applicant's background check?

- Same test, but different result?
- Corrections Law Article 23-A
 - Eight-factor test still applies
 - Balancing test may come out differently due to strong public policy in favor of re-employment

**What if convictions eligible for sealing
appear on background checks between
now and November 2027?**

What if there is an out of state or federal conviction that would have been sealed if it had been committed in NYS?

We hire employees that are subject to background checks by law. Am I able to see all their convictions?

We hire employees that are subject to background checks by law. Am I able to see all their convictions?

- Exceptions for
 - Entities allowed to run fingerprint-based background checks
 - *Employees working with children, disabled, elderly, vulnerable populations*
 - Entities required to consider sealed records or run fingerprint-based background checks
 - NYS Education Department for hiring in schools and licensing
 - Private transportation companies (Lyft, Uber)
 - Entities hiring police/peace officers

How do I know if we are the type of employer that falls under the Clean Slate Act exceptions?

How do I know if we are the type of employer that falls under the Clean Slate Act exceptions?

- Are you able to obtain a fingerprint-based background check already?
 - Federal, state or local law specify which employers can access fingerprint-based checks
 - Fingerprints are submitted directly to NYS DCJS; different than buying a background check from a private background check vendor
- DCJS will maintain a list of citations to laws that allow access

Industries subject to Clean Slate Act exception

- Home Health Care Agencies
- Nursing Homes
- School Districts
- Museums
- Financial Institutions
- Child Care Agencies
- Police/Sheriff Departments

What about negligent hiring liability?

What about negligent hiring liability?

- Conviction record sealed pursuant to the Act and not provided to an employer upon request for conviction record history cannot be introduced as evidence of negligence against the employer

What other laws come into play when running background checks?

Fair Credit Reporting Act

- **The FCRA regulates**
 - “Consumer reports”
 - Report provided by CRA regarding credit standing, character, general reputation, personal characteristics
 - “Investigative consumer reports”
 - Information obtained through personal interviews
- **Does not apply to internal checks conducted by employer**

Fair Credit Reporting Act

- **Before Requesting a Report**

- Disclosure
 - A written statement that a report may be obtained for employment purposes
 - Must be a separate, stand-alone document
 - The disclosure MAY NOT be combined with any other document (*i.e.*, a job application, liability release)
 - Clear and conspicuous
 - In writing
 - FCRA disclosure and authorization may be combined
- Written authorization
- Certification

*Investigative consumer reports have additional requirements

Fair Credit Reporting Act

- **Before** taking any adverse action based in whole or in part on a consumer report, employer must:
 - Provide a copy of the report (*already doing so under Clean Slate Act*)
 - Provide a “Summary of Your Rights Under the Fair Credit Reporting Act”
 - Allow a “reasonable period of time” to challenge or reply to the report
 - No specific time period
 - Varies based on circumstances
 - Generally, five (5) business days is considered reasonable
 - Four (4) business days has been found not a reasonable period

Background Checks & Fair Credit Reporting Act

- **After you decide not to hire, must**
 - Notify that the report was the basis
 - Provide name, address, and phone number of the CRA
 - Statement on CRA's limited role
 - Notice of individual's right to:
 - Free copy of the consumer report
 - Dispute the accuracy of the report with the CRA

*Don't forget - Article 23-A requires a written statement of reason for denial upon request from the applicant.

Questions?



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Thank You

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