

How New York Article 23-A Affects Employers

Article 23-A is about unfair discrimination against persons previously convicted of one or more criminal offenses. There are certain factors that must be considered by an employer about an applicant's previous criminal conviction, and certain disclosures must be made.

Simply stated, Article 23-A is applicable when an applicant with a prior criminal conviction is applying for employment with either a private employer or public agency (which includes applying for a license). For the purpose of Article 23-A, a private employer is defined as any person, company, corporation, labor organization or association which employs ten or more persons.

A copy of the article is found under COR-Correction at:

<http://public.leginfo.state.ny.us/menugtf.cgi?COMMONQUERY=LAWS>

Article 23-A prohibits private employers and public agencies from denying or taking adverse action upon an application for employment or license based on the existence of a prior criminal conviction or “a finding of lack of ‘good moral character’” as a result of prior criminal conviction(s) unless one of the following exceptions applies:

- there is a direct relationship between the criminal offenses and the specific license or employment; or
- granting or continuing the license or employment would involve an unreasonable risk to property, safety, or welfare of specific individuals or the general public.

If a private employer or public agency rejects the application of an individual convicted of a criminal offense, it must provide, within 30 days of a request, a written statement of the reasons for denial.

In addition, there are two conditions that apply to a private employer or public agency:

1. Post a copy of Article 23-A in a conspicuous manner and place accessible to employees (LAB Law § 201-f);
2. Provide an applicant with a copy of Article 23-A if a criminal record is found in the background check (Gen. Bus. Law § 380-g(d)). **However, the better practice to ensure a notice is provided is to provide the notice when the applicant signs the authorization.**

Also, it is the **recommendation by this author** when the CRA is hired, that the CRA should provide the employer with a document outlining the conditions of Article 23-A

The pages to follow provide suggested text that can be used when preparing the employer documents.

1. Disclosure Form Provided by Employer to Applicant:

NEW YORK DISCLOSURE AND RELEASE

In connection with my application for employment (including contract for services) with (name of customer), I understand that consumer reports which may contain public record information and investigative consumer reports consisting of interviews with employers, neighbors, friends, and associates may be requested from (CRA name) a consumer reporting agency. These reports may include the following types of information: names of employers and dates of previous employment, reason for termination of employment, work experience, accidents, etc. I further understand that such reports may contain public record information concerning my driving record, workers' compensation claims, credit, bankruptcy proceedings, criminal records, etc., from federal, state and other agencies which maintain such records. I hereby consent to your obtaining the above information from such agency.

I AUTHORIZE, WITHOUT RESERVATION, ANY PARTY OR AGENCY CONTACTED BY THE CONSUMER REPORTING AGENCY TO FURNISH THE ABOVE-MENTIONED INFORMATION.

I have the right to make a request to (CRA name and address), upon proper identification, to request the nature and substance of all information in its files on me at the time of my request, including the sources of information; and the recipients of any reports on me which the agency has previously furnished within the two year period preceding my request.

I hereby authorize procurement of consumer report(s). If hired (or contracted), this authorization shall remain on file and shall serve as ongoing authorization for you to procure consumer reports and investigative consumer reports at any time during my employment (or contract) period.

I acknowledge receipt of a copy of Article 23-A of New York Correction Law.

Print Name: _____

Social Security Number _____

Applicant's Signature: _____

Date: _____

2. Copy of Article 23-A provided by Employer to Applicant

Below is the suggested Preface:

COPY OF THIS LAW IS BEING PROVIDED TO YOU IN CONJUNCTION WITH OUR ORDERING BACKGROUND REPORT ON YOU.

New York Bus Code §380-c(b)(2) and 380-g(d)

Place copy of the law here - Found under COR – Corrections at
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

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