

Criminal Records & Employment Discrimination

Paul Keefe

Staff Attorney

Community Service Society

105 E. 22nd Street

pkeefe@cssny.org

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Nothing in this guide should be considered legal advice. Privately consult an attorney if you are considering legal action.

Employment discrimination: Title VII

1. Prohibits discrimination by race, national origin, color, gender, religion, age, disability, and marital and family status.
2. Blanket policies against hiring people with **criminal or arrest records** are illegal because they have a disparate impact on race.

Employment discrimination: Special protection under NY law

Public and Private employers cannot

1. Deny a job or a license or
2. Find a lack of “good moral character”

Because of a **criminal conviction**.

- New York Corrections Law Article 23-A
- New York State Human Rights Law
- New York City Human Rights Law

Employment discrimination: Special protection under state law

A criminal conviction is only relevant if:

1. A **direct relationship** exists between the conviction and the job; OR
2. Employment would pose an **unreasonable risk** to persons or property.

Before either exception applies, however, statutory factors **must be considered**.

Employment discrimination: Special protection under state law

Under either exception, employers must consider certain factors:

1. New York's public policy in favor of employing people with criminal histories.
2. How the conviction relates to the applicant's fitness and ability to perform the job's duties.
3. How long ago and how serious the crime was; the applicant's age at the time.

Employment discrimination: Special protection under state law

Under either exception, employers must consider certain factors:

4. Employer's legitimate interest in protecting people and property.
5. Applicant's evidence of rehabilitation.
6. Certificate of Relief from Disabilities or Certificate of Good Conduct, which create a presumption of rehabilitation.

Handling a criminal record: Certificates of Relief/Good Conduct

Certificates of Relief from Disabilities and
Certificates of Good Conduct

1. Remove legal barriers to employment, licenses, and public housing.
2. Create a presumption of rehabilitation.

CRD: Parolees can vote; no public office.

CGC: Removes ban on holding public office, most relevant for notaries.

Handling a criminal record: Request an explanation

Anyone who has a criminal record and is denied a job or license can request an **explanation**, which must be provided within 30 days.

- Corrections Law § 754

Handling a criminal record: Request an explanation

Anyone denied employment because of a credit report must be told.

- » Can demand a free report within 60 days along with a list of everyone who requested it within the last two years.
- » Convictions older than 7 years cannot be reported.
 - Fair Credit Reporting Act

Handling a criminal record: Benefits to employers

1. **Work Opportunity Tax Credit \$2,400** for adults with felony convictions, released w/i/past year, who are members of economically disadvantaged families.
2. **Federal bonding program:** Typically \$5,000 for six months of coverage, but may be increased to \$25,000.
3. **Negligent hiring liability is remote.**

Handling a criminal record: File a complaint or lawsuit

1. File a complaint with the EEOC or local human rights office
2. Bring a private lawsuit.
 - » Human Rights office has broad remedial powers to assess civil penalties and institute anti-discrimination policies plus order hiring, reinstatement and pursue monetary damages.

Recommendations

1. Expand Title VII to provide similar or greater protections than NY law.
2. Increase EEOC's enforcement resources.
3. Review federal regulations that, without a public safety justification, prevent hiring people with criminal records.
4. Restore Pell Grants for prisoners: less recidivism; more employability.