



New York's Clean Slate Act Requires Sealing of Certain Convictions and Imposes New Notice Obligations on Employers Conducting Criminal Background Checks

CLIENT ALERTS | DEC. 02, 2024

The [New York Clean Slate Act](#) (the Act), which took effect Nov. 16, 2024, provides for the automatic sealing of certain convictions when certain periods of time have passed, after which information regarding the sealed convictions generally will no longer be available in connection with criminal background checks. Relatedly, the Act prohibits employers from inquiring into or taking adverse action against applicants or employees based on such sealed convictions. Importantly, the Act also requires employers to provide additional notices to applicants and employees as to criminal history information the employer receives, regardless of whether the employer is considering taking an adverse action on the basis of an applicant's or employee's criminal record.

Automatic Sealing of Certain Convictions

The Act amends [New York Criminal Procedure Law Section 160.57](#) to require the New York State Unified Court System to seal eligible convictions by no later than Nov. 16, 2027. Thereafter, all eligible convictions will be sealed automatically.

Eligible Convictions

Felony convictions are to be sealed when "at least eight years have passed from the date the defendant was last released from incarceration for the sentence of the conviction eligible for sealing or from the imposition of sentence if there was no incarceration."

Misdemeanor convictions are to be sealed when "at least three years have passed from the defendant's release from incarceration or the imposition of sentence if there was no sentence of incarceration."

Convictions for driving while impaired by alcohol under [Section 1192 of the New York Vehicle and Traffic Law](#) are to be sealed after three years.

Exceptions

Certain convictions are exempt from automatic sealing under the Act. These include non-drug-related class A felony convictions (including murder), sex offenses and sexually violent offenses, federal convictions and convictions from jurisdictions other than New York.

Sealing will not occur during any period the applicant or employee has a subsequent criminal charge pending (in New York State or, with limited exceptions, in another jurisdiction) or is on probation or under parole supervision for the relevant conviction. Moreover, if the applicant or employee incurs a new criminal conviction before a prior conviction is sealed, the clock for automatic sealing restarts based on the most recent conviction.

Employers required by law to conduct “fingerprint-based” criminal history checks (such as broker-dealers) and those authorized to conduct fingerprint-based background checks because the applicant would be working with children, the elderly, disabled individuals or vulnerable populations will retain access to criminal history records that would otherwise be sealed under the Act. Such exempted employers that receive records that would otherwise be sealed as part of a background check owe a duty of care to individuals with sealed convictions and can be liable for damages under [Section 50-G of the New York Civil Rights Law](#) if (i) they “knowingly and willfully” breach that duty of care by disclosing the sealed records without the individual’s consent, (ii) the disclosure causes injury to the individual, and (iii) the employer’s breach of their duty of care was a “substantial factor in the events that caused the injury suffered” by the individual.

Prohibition on Inquiring into or Taking Adverse Action Based on Applicant’s/Employee’s Sealed Conviction

The Act also amends [New York State Human Rights Law Section 296\(16\)](#). Under the amendment, it is an unlawful discriminatory practice for employers to inquire about or take adverse action against applicants or employees based on convictions that are sealed pursuant to the Act, except when the sealed conviction is accessed for purposes permitted under the Act.

New Notice Obligations for Employers

The Act amends [New York Executive Law Section 845-d](#) to impose new notice obligations for employers running criminal background checks. Under the Act, entities that receive criminal history information must provide a copy of such criminal history information to every individual for whom such information is received, together with a copy of Article 23-A of the New York Correction Law. In addition, employers must inform the individual for whom such criminal history information is received “of their right to seek correction of any incorrect information contained in such information pursuant to the regulations and procedures established by the [Division of Criminal Justice Services],” the New York State agency that, among other things, maintains criminal history records

and fingerprint files. Notice must be provided under the Act regardless of whether the employer is considering denying employment or taking other adverse action against an applicant or employee based on their criminal history.

Defense to Negligent Hiring Claims

The Act provides employers with a defense to negligent hiring claims. An employee's criminal history record that has been sealed under the Act "may not be introduced as evidence of negligence" against an employer if the employer did not receive the record as part of the background check process because the record was sealed.

As a reminder, employers also benefit from a rebuttable presumption under [Section 296\(15\) of the New York State Human Rights Law](#) (separate from the Clean Slate Act) in favor of excluding prior incarceration or conviction records in a negligent hiring or negligent retention action when the employer has made a good faith analysis of the Article 23-A factors.

Existing Employer Obligations Under New York State and City Laws

Notably, the Act does not impact an employer's obligation to conduct an analysis under [Article 23-A of the New York Correction Law](#) prior to taking an adverse action based on an individual's criminal history. Nor does the Act change employers' existing obligations to comply with local requirements regarding background check protocols, including the New York City Fair Chance Act. Employers remain obligated to perform an individualized analysis of each of the factors set forth under Article 23-A (or the "Relevant Fair Chance Factors" when considering convictions that occur during employment or pending criminal charges) in assessing an individual's criminal history in connection with deciding whether to take adverse action, and to provide the analysis to the applicant in writing, along with the "supporting documents" that formed the basis of the adverse action as discussed in our [prior alert](#).

Takeaways for Employers

Employers considering the criminal history of applicants and/or employees should be aware of the heightened notice obligations imposed by the Clean Slate Act, effective Nov. 16, 2024. Employers should also review and update their background check practices as necessary to ensure that they comply with the new notice requirements under the Clean Slate Act.

We will continue to monitor legal developments regarding employers' background check protocols. For questions or concerns regarding this alert, please contact a member of Kramer Levin's [Employment Law Department](#).

Izabel P. McDonald

Co-author
New York
T 212.715.9160
F 212.715.8160
imcdonald@kramerlevin.com

Genevieve Burger-Weiser
Co-author
New York
T 212.715.9367
gburgerweiser@kramerlevin.com