Employer Guide for Hiring Individuals With Criminal Records in New York State
Criminal Justice and Employment Initiative

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INTRODUCTION

Cornell ILR’s Criminal Justice and Employment Initiative (CJEI) prepared this brochure as a resource guide for employers regarding best practices for hiring qualified justice-involved individuals. As unemployment falls, it is difficult for employers to find capable workers. Expanding the applicant pool to include skilled individuals with criminal records is becoming increasingly attractive and necessary. Through its training seminars, workshops, and conferences, CJEI educates employers about successful approaches to hiring people with criminal records. This guide is the first step toward understanding best practices when considering applicants who have been involved in the criminal justice system, and it explains how the law offers protection for employers.

EMPLOYER BENEFITS

Reduced turnover: Employees with criminal records tend to stay on the job and remain loyal to employers who hire them.

Increased engagement: Many employees with criminal records want to succeed, determined not to return to prison or their previous lifestyle.

Recently acquired skills: Some prisons, reentry services, and diversion programs offer job training to increase employment opportunities for individuals with criminal records.

Tax credits: Employers can receive up to $9,600 for each individual with a criminal record they hire. For more information on an application and eligibility, see: www.doleta.gov/business/incentives/opptax/
EMPLOYMENT LAWS

Ban the Box/NYC Fair Chance Act: These laws prohibit questions regarding a criminal history on job applications and during the initial interview. Ban the Box provides employers the opportunity to discuss applicants’ skills and qualifications before learning about their criminal history. Laws vary by locality.

Employers should take the following steps to ensure compliance with Ban the Box requirements:

- Do not include questions regarding criminal history on job applications or during the initial interview.
- Ensure language on employment advertisements does not exclude applicants with criminal records.
- Train recruitment and hiring managers about relevant NYS and local laws and when they may ask about an applicant’s criminal history.
- Check local law to determine the exact requirements in your area and the appropriate enforcement agency.

NYS Correction Law Article 23-A: The purpose of this law is to ensure employers conduct an individualized assessment of all qualified candidates, regardless of criminal history.

Employers must consider the following factors when evaluating a job applicant with a criminal record:

- **Job-specific duties and responsibilities needed for the position:**
  - Review the applicant’s job experience and skills and compare to the job requirements.

Impact the criminal record has on the applicant’s ability to perform the duties or responsibilities of the job:

- Determine if there is a “direct relationship” between the previous criminal offense(s) and the job the applicant is seeking (i.e., animal abuse charge ≠ job at animal shelter).

MYTHS AND FACTS

**Myth:** Unreliable
**Fact:** Most justice-involved individuals are productive employees eager to demonstrate their skills in the workplace.

**Myth:** More likely to commit crimes again
**Fact:** Research has shown people with criminal records who are employed are significantly less likely to commit a crime again.

**Myth:** Poor work ethic
**Fact:** Most receive job assignments in prison and participate in work release programs, which requires meeting performance goals.

**Myth:** Lack of education
**Fact:** Some prisons and nonprofits offer a variety of courses and apprenticeship programs through partnerships with local colleges and/or vocational schools. For example, Cornell’s Prison Education Program provides college-level courses at Auburn Correctional Facility and Cayuga Correctional Facility. For more information, see: [ceep.cornell.edu](ceep.cornell.edu)

**Myth:** Negative co-worker perceptions
**Fact:** Aside from line managers, there is no need for co-workers to know an employee’s past.

**Myth:** Negligent hiring lawsuits
**Fact:** An employer who applies the individual assessment provided by Article 23-A creates a presumption of due diligence, a defense in these lawsuits.

[CEEP website link]
**Amount of time that has passed since the criminal offense:**

- Take into account how long it has been since the applicant's last contact with the criminal justice system.

**Age when the offense was committed:**

- Consider how old the applicant was at the time of the offense. Studies show people are less likely to commit a crime as they mature physically, mentally, and emotionally throughout their lives.

**Seriousness of the offense(s):**

- Consider the number of convictions and the circumstances surrounding the conduct.

**Candidate's ability to provide someone willing to speak on her/his behalf about positive change:**

- Evaluate proof of positive change, which may include certificates and letters from the community.

Certificates are documents issued by a government entity as evidence of rehabilitation. The justice-involved individual goes through an intensive screening process to obtain a certificate.

**Impact the candidate's employment may have on the safety and general welfare of others:**

- Consider whether or not the conviction is related to the job requirements.

**Title VII:** The Civil Rights Act of 1964, a federal law enforced by the Equal Employment Opportunity Commission, protects all job applicants and employees from discrimination on the basis of their race, color, religion, sex, gender, or national origin.

Employers' fair screening policy should consider:

- Individualized assessment;
- Equal treatment of criminal history information for all applicants;
- Nature of the crime;
- Time elapsed; and
- Duties of the job.

**Fair Credit Reporting Act (FCRA):** This federal law, enforced by The Federal Trade Commission, requires employers to provide an applicant the opportunity to review and challenge the results of the background check before denying the applicant a job.

Employer should take the following steps to comply with FCRA:

- Request the applicant's written permission to conduct the background check.
- Notify the applicant in writing that the information obtained from a background report may be used for employment decisions.
- Provide applicant an opportunity to challenge the information in the background report and offer proof of positive change before taking an adverse action.
RISK REDUCTION

Insurance Protection: Insurers who write commercial crime insurance policies must provide coverage to an employer who has weighed the factors set out in NYS Correction Law Article 23-A and made a determination to hire the justice-involved applicant (NYS Insurance Regulation 209 of 2017).

Federal Bonding Program: Protects employers who hire people with criminal records and insures them against certain crimes committed on the job. For more information, see: bonds4jobs.com

EMPLOYER BEST PRACTICES

Accurate Background Checks: Denying a job to a qualified applicant due to inaccuracies in a criminal background check negatively impacts the applicant and the employer.

Employers should work with credit reporting agencies (CRA) that follow these best practices:
- Certified by the National Association of Professional Background Screeners. For more information, see: www.napbs.com;
- Confirms all information with original criminal justice source;
- Uses full name and at least one other personal identifier before reporting a criminal record;
- Reports all charges from a single incident as a single entry;
- Removes arrests, dismissed, or sealed dispositions; and
- Regularly notifies employer with updated information on the disposition of relevant cases.

Fair Interview Process: Employers and recruitment professionals can review and plan their interview process to make sure all applicants have an equal opportunity to demonstrate they are the best candidates for the positions.

Employers should implement a fair interview process by following these practices:
- Eliminate policies and practices that automatically disqualify applicants based on criminal records;
- Ask only job-related questions during the job interview;
- Obtain applicants’ permission before requesting a background check;
Keep information about criminal records confidential;
Provide applicants the opportunity to explain mitigating circumstances related to the offense or conduct;
Consider only job-related convictions in the hiring process;
Provide the applicant with an opportunity to review and challenge the CRA report; and
Consider applicants’ efforts at rehabilitation and positive change.

Non-Discriminatory Hiring Process: Comprehensive training for HR staff and a transparent process can help a company objectively assess qualifications of justice-involved individuals.

Employers can improve the hiring process by:
✓ Providing anti-discrimination and implicit bias training to HR staff to ensure fair screening of applicants;
✓ Setting clear objectives for recruitment efforts;
✓ Conducting regular audits to determine whether criminal record screening policies are having an adverse impact on Black and Latino job applicants;
✓ Implementing standardized selection procedures for use by HR staff; and
✓ Instructing HR staff to consider Certificates of Relief from Disabilities and Certificates of Good Conduct as proof of rehabilitation.

Coordinate with Workforce Development Programs: These programs provide support to employers and justice-involved employees to promote on-the-job success.

Workforce Development programs help businesses ensure workers get the assistance they need, such as:
✓ Transportation to work at no cost to the employer;
✓ Workplace competence, including interpersonal communication, organizational skills, and leadership training;
✓ High school equivalency courses;
✓ Case management for employees with criminal histories; and
✓ Advice for employers on how to apply for tax credits and subsidies.
The Criminal Justice and Employment Initiative (CJEI) has been in the forefront of joining diverse constituencies for dialogue, legal education, and research on reducing barriers to employment for people with criminal records. The CJEI analyzes and proposes best practices on the issues of evaluating candidates with criminal records, employment of justice-involved individuals, criminal records education, and occupational licensing. Its work has included national conferences; focus groups; educational public programs; customized training for employers, individuals with criminal records, law enforcement personnel, and advocates; outreach; and the development of resources, including the CJEI website:

www.ilr.cornell.edu/labor-and-employment-law-program/
criminal-justice-and-employment-initiative

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