

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

NOVEMBER 30, 2023

### **New York State's Clean Slate Act: Highlights for Private Employers Including Healthcare and Human Services Employers**

On Nov. 16, 2023, New York State Gov. Kathy Hochul signed legislation, also known as the Clean Slate Act, to automatically seal from public access criminal records for most individuals convicted of a crime.

The Act takes effect in one year, on Nov. 16, 2024, and its key intent is to increase employment opportunities for individuals with criminal histories who have no recent criminal convictions. The law amends New York's criminal procedure law, the executive law, the correction law, the judiciary law and the civil rights law with respect to the automatic sealing of select convictions. New York follows several other states, such as California, Connecticut, Colorado, Pennsylvania, Oklahoma and Utah, who have also enacted similar laws.

To be eligible for automatic sealing of their records, individuals must complete their sentences (including probation or parole time) and do not reoffend within a stipulated period of time. This statutory period ranges from three years for misdemeanors to eight years for eligible felonies. The clock restarts if parole or probation is revoked or if there is a new conviction. All records of sex crimes, and Class A felonies (such as first or second-degree murder, first degree kidnapping), except those related to drug possession, are ineligible for sealing.

The law provides for several exceptions where sealed records could still be accessed and used for law enforcement, in criminal proceedings under certain circumstances, and other necessary purposes such as determining suitability for various licenses, and for employment and other activities where federal or state law requires or authorizes a criminal background check to be performed prior to granting licenses to or employing individuals in certain jobs.

#### **Busting Myths**

**Myth:** The law will erase all criminal records.

**Fact Check:** The law automatically seals certain criminal records but does not expunge them. Notably, the Clean Slate Act would only seal convictions under New York's penal law. The Act would not seal criminal convictions under federal law or the criminal law of any state other than New York. Sealing is not automatic when the convicted individual has a criminal charge pending or is on probation or under parole supervision when the statutory time period for automatic sealing elapses.

**Myth:** Law enforcement will not have access to criminal records.

**Fact Check:** Records automatically sealed under this Act could still be accessed and used by law enforcement for permissible purposes including to assess the employment of law enforcement officers, or when conducting investigations.

**Myth: Background checks for vulnerable populations, such as children, the disabled and the elderly, are now compromised because employers can hire individuals with criminal records.**

**Fact Check:** Entities, including those that work with children, the elderly or vulnerable adults, that are required or authorized by law to conduct a fingerprint-based background check, are not impacted by the Clean Slate Act. Under the Act, such background checks are considered relevant and necessary prior to the employment of individuals working with these vulnerable populations and will include criminal records which have been sealed under this Act. The Act will also not seal the records of individuals who are required to register as a sex offender.

**Myth: Gun licenses will be issued without a proper background check.**

**Fact Check:** The law does not apply when licensing officers are processing a firearm license application. In this instance, the criminal records will not be sealed.

**Myth: Individuals who have a criminal record may get preferential treatment for a job over an individual with no criminal record.**

**Fact Check:** New York state law prohibits discrimination against an individual because of their criminal conviction status. The Clean Slate Act does not impact this protected status. This means that New York employers cannot make employment decisions such as terminating a current employee or refusing to hire an applicant because of their pre-employment criminal conviction record. Article 23-A of the New York State Correction Law provides an exception to this rule, where an employer may still deny employment based on a criminal conviction record if the employer can establish a direct relationship between one or more of the previous criminal offenses and the specific employment sought; or where there is an unreasonable risk to the property or to the safety or welfare of specific individuals or the general public. Employers must consider several factors when making the above determination. New York City employers must also consider the intersection of the Fair Chance Act, which prescribes additional requirements for inquiring about or making decisions based on an individual's criminal record. Once the Clean Slate Act is in effect, employers should be aware of their additional obligations under New York state law. For example, employers should not consider sealed criminal records in employment decisions. Further, employers that receive unsealed criminal records in response to a request for criminal conviction history should provide the employee or applicant with a copy of the criminal records received, a copy of Article-23 of the New York State Correction Law and notice to the employee or applicant of their right to correct any incorrect information pursuant to the regulations and procedures established by the Division of Criminal Justice Services. Legal counsel is recommended when considering criminal conviction history in employment decisions.

**Myth: Sealed conviction records can later be used against an employer as evidence of employer negligence.**

**Fact Check:** The Clean Slate Act provides that a conviction record that was sealed pursuant to the Act and was not provided to an employer upon request for conviction record history cannot be introduced as evidence of negligence against the employer.

## **Considerations for Healthcare and Human Services Employers**

For healthcare and human services employers, the Clean Slate Act broadly preserves access to criminal records where federal and state statutes have previously required such employers to screen potential employees in the interest of protecting patients or service recipient safety. Depending on their specific regulatory requirements, employers may be required to perform various background checks such as a Criminal History Record Check, a Staff Exclusion List (SEL) clearance through the New York State Justice Center, and the Statewide Central Register (SCR) database check through the New York State Office of Children and Family Services. As part of these checks, employers will be able to access permissible criminal records, including records that were automatically sealed under the Clean Slate Act.

As detailed above, the existing provisions of Corrections Law Article 23-A, continues to apply to any employer using such records in its employment decisions, including the requirement that there be a nexus between the prior criminal conduct and the reason an employer chooses not to employ a particular person.

### **Next Steps**

Employers should review and update policies specifically related to hiring, background screening, use of conviction records and nondiscrimination policies. Once the law is effective, it is recommended that employers consult with legal counsel prior to taking an employment action in New York State based upon an individual's criminal history.

If you have any questions about the information presented in this information memo, please contact [Natalie Vogel](#), [Roger Bearden](#) or any attorney in Bond's [labor and employment practice](#) or the Bond attorney with whom you are regularly in contact.

