

# NEW YORK STATE AMENDMENTS

## TO ITS GENERAL BUSINESS LAW AND LABOR LAW RELATED TO ARTICLE 23-A OF NEW YORK CORRECTION LAW

**Effective February 1<sup>st</sup>, 2009**

**Bill 7638-A:**

<http://assembly.state.ny.us/leg/?bn=S07638&sh=t>

**Correction Law Article 23-A:**

<http://www.labor.state.ny.us/agencyinfo/PDFs/CorrectionLaw%20Article%2023-A%204.pdf>

**Posters should be available free of charge by the end of the year.**

Please contact the New York State Division of Human Rights at (718) 741-8400

Or visit: <http://www.dhr.state.ny.us/>

In an effort to encourage employment of otherwise qualified applicants those with conviction records, the state of New York recently amended its general business and labor laws relating to background checks and notices to applicants and employees of their rights. The new law is effective February 1, 2009.

Among other things, New York law requires that public agencies and private employers provide certain notices in connection with employment applications involving persons convicted of criminal offenses regardless of whether the conviction was in New York or another state. The notices are based on hiring requirements that are found in Article 23-A of the Correction Law. Article 23-A applies to any person, company, corporation, labor organization or association that employs more than ten people, but does not apply where there is a specific legal prohibition on hiring applicants with a criminal history.

### **1- POSTING OF ARTICLE 23-A OF THE CORRECTION LAW IN THE WORKPLACE**

New York employers must post a copy of Article 23-A of the Correction Law **in a visually conspicuous manner in an accessible location** in the workplace.

### **2- AMENDMENT IN CONNECTION WITH ANY TYPE OF CONSUMER REPORTS CONTAINING CRIMINAL CONVICTION INFORMATION**

When a consumer report received by an employer contains criminal conviction information, **the employer must provide** to the applicant or employee who is the subject of the report, a printed or electronic **copy of Article 23-A of the New York Correction Law**, which governs the employment of persons previously convicted of one or more criminal offenses.

### **3- AMENDMENT IN CONNECTION WITH INVESTIGATIVE CONSUMER REPORTS (e.g., when an employer orders “Character References” or “Extended Employment References”)**

No person may procure or cause to be prepared an “investigative consumer report\*” on any consumer unless he has first provided the consumer with notice of the procurement or preparation, and has first received authorization from the consumer for preparation or procurement of an investigative consumer report. The notice must be in writing if a written application is made by the consumer, but the authorization notice can be delivered orally or in writing in any other circumstances.

The authorization notice must inform the consumer that an investigative consumer report may be requested and the

consumer, **upon written request**, will be informed **whether or not an investigative consumer report was requested**, and if such report was requested, **the name and address of the consumer reporting agency** to whom the request was made. The consumer must also be informed he may **inspect and receive a copy of the report by contacting the consumer reporting agency**.

Additionally, **if an investigative consumer report was requested with respect to an offer of employment** the person or entity requesting the report must also include in the authorization notice **a copy of Article 23-A of the Correction Law** governing the licensure and employment of persons previously convicted of criminal offenses.

(\*) **NY General Business Law § 380-a (d)**: The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information.

### **FACTORS TO BE CONSIDERED CONCERNING A PREVIOUS CRIMINAL CONVICTION Article 23-A Section 753**

Article 23-A Section 753 of New York Correction Law requires employers to consider and balance a number of factors before terminating or refusing to hire individuals with a prior criminal conviction, including:

- The specific duties and responsibilities necessarily related to the employment sought or held by the person.
- The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
- The time that has elapsed since the occurrence of the criminal offense or offenses.
- The age of the person at the time of occurrence of the criminal offense or offenses.
- The seriousness of the offense or offenses.
- Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
- The legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public.
- The public policy of the state of New York to encourage the employment of persons with prior criminal convictions

**NOTE:** The employer must also give due consideration to certificates of relief from disabilities or certificates of good conduct. Such certificates create a presumption of rehabilitation. Moreover, the New York State Legislature amended § 296 of the Human Rights Law. There is now a rebuttable presumption in favor of excluding from evidence the prior incarceration or conviction of an employee in a case alleging that the employer was negligent in hiring or retaining an applicant or employee, or supervising a hiring manager if the employer can show that it undertook a good faith, reasonable, determination that the factors outlined in the Article 23-A §753 favored a decision to hire the employee (or retain the employee, if the employer learned of the conviction after hire).

### **WRITTEN STATEMENT UPON DENIAL OF LICENSE OR EMPLOYMENT Article 23-A Section 754**

At the request of any person previously convicted of a criminal offense who has been denied a license or employment, a public agency or private employer must provide, within thirty days of the request, a written statement setting forth the reasons for the denial.