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New York Clean Slate Act Takes Effect on November 16, 2024, With New Obligations for Employers Running Criminal Background Checks

Law and the Workplace on **November 11, 2024**

On November 16, 2024, the New York Clean Slate Act (the "Act") will take effect. The Act provides for the automatic sealing of certain criminal convictions after a specified time period. It will also require greater disclosure by employers of criminal history information being considered in connection with hiring or continued employment.

Specifically, the Act provides that the New York State Unified Court System has up to three years from the effective date (that is, until November 16, 2027) to seal all eligible convictions. At that point, going forward, all eligible convictions will be automatically sealed and will become unavailable to most employers that conduct background checks as part of the hiring process or otherwise in the course of employment.

Convictions Eligible for Sealing

Convictions for most misdemeanor and felony convictions are eligible to be sealed. However, certain convictions, such as sex offenses, sexually violent offenses, and non-drug-related Class A felonies, including murder, are not eligible for sealing under the Act.

Time Period Before Convictions are Sealed

Misdemeanor convictions are eligible to be sealed three years from the date of sentencing (if no sentence of incarceration was imposed), or three years from the date of the individual's release from incarceration, whichever is later. Felony convictions are eligible to be sealed eight years from the date of sentencing (if no sentence of incarceration was imposed), or eight years from the date of the individual's release from incarceration, whichever is later.

For a conviction to be sealed, the individual must not currently be on parole, probation, or post-release supervision. Moreover, if the individual incurs a new misdemeanor or felony conviction before their prior conviction is sealed, the waiting period starts over and reflects the most recent conviction. The prior conviction is only sealed once the waiting period for the most recent conviction is complete.

Exempt Employers

Employers that are otherwise required by law to conduct “fingerprint-based” criminal history checks, such as employers in childcare, eldercare, and disability care, will have access to records that would otherwise be sealed under the Act.

Employer Notice Requirements

The Act also imposes heightened notice obligations on employers conducting background checks that include criminal history information. Employers that receive criminal history information as part of a background check will now be required to furnish a copy of the report containing such information to the applicant and notify the applicant of their right to “seek correction of any incorrect information contained [therein].” This information must be provided along with a copy of Article 23-A of the New York Correction Law, which employers are already required to furnish to applicants as part of the criminal history background check process under law.

Importantly, employers must abide by the above notice requirement regardless of whether the employer plans to take adverse action against the applicant based on their criminal history. This is a change from the current process whereby criminal history information obtained as part of a background check need only be disclosed by an employer if adverse action is intended to be taken.

Protections Against Negligence Claims for Employers

Because many criminal convictions will be sealed, the Act provides non-exempt employers with a defense against negligent hiring, retention, and supervision claims. If, for example, an employer conducts a background check on an applicant and the criminal history report did not contain any convictions because the convictions were sealed, and the employer hired the applicant who then engaged in some type of wrongful behavior at work, the Act would prohibit potential litigants from introducing the sealed convictions as evidence of negligence against the employer because the employer had no knowledge of such convictions.

However, employers exempted under the Act (as described above) 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 negligence under Section 50-G of the New York Civil Rights Law if they (i) "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.

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Related Professionals

- **Evandro C. Gigante**
  Partner
- **Laura M. Fant**
  Special Employment Law Counsel