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A publication of

**THE LEGAL ACTION CENTER**

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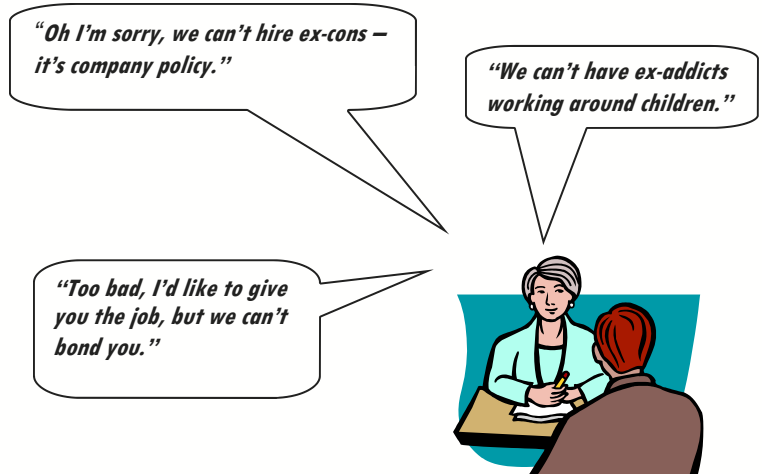
2005

**ARE YOU SOMEBODY...**

- WITH A CRIMINAL RECORD?
- WITH AN ALCOHOL OR DRUG HISTORY?
- IN A METHADONE PROGRAM?

**If so, then you probably have had trouble getting a job.**

**Does this sound familiar?**



**DON'T LET IT HAPPEN TO YOU!**

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## **HOW THIS BOOKLET WILL HELP YOU PREVENT JOB DISCRIMINATION**

This booklet will help you prevent job discrimination before it happens. It will tell you about:

- laws that protect people with criminal records and alcohol/drug histories from job discrimination.
- what to do if you are denied a job because of your past.
- a government program to encourage companies to hire people with criminal records and people with past alcohol and drug problems.
- a federal bonding program for people with criminal records and people in recovery.

Getting a job is like winning at a game – your chances improve if you LEARN THE RULES and PREPARE.

### **HOW EMPLOYERS LEARN ABOUT YOUR PAST**

Employers often find out that job applicants have criminal records or past drug or alcohol problems, including addiction, by:

- asking you questions on job applications and in interviews.
- getting a consumer report (sometimes called a “credit report”) that has information about your criminal history. And remember that drug-related arrests or convictions can clue employers into your involvement with drugs. If your salary will be less

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*The Legal Action Center is a non-profit, public interest organization that works on legal issues involving criminal records, alcohol and drug problems and HIV/AIDS.*

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than \$25,000, the law only allows an employer to see convictions from the last seven years. If the salary is \$25,000 or more, the employer may see all criminal convictions.

- fingerprinting you and getting your rap sheet. Employers in certain industries and the government often do this.
- giving you medical examinations or asking you questions about drug or alcohol use, or treatment for addiction or alcoholism.

#### **WHAT EMPLOYERS HAVE A RIGHT TO KNOW IN NEW YORK**

It is legal for employers to –

- ask if you have ever been convicted. They also may ask for details about your convictions, including exactly what you did. However, they may not legally ask, “Have you ever been arrested?” If they ask this illegal question, and you were arrested but not convicted, you may say “no.” If you have had any convictions, however, you must reveal them. (See *Frequently Asked Question #3*, below.)
- ask if you have a current physical or mental condition that might prevent you from doing the job. Employers may ask some questions about your drug and alcohol use, but they may not ask everything. (See *Frequently Asked Question #6*, below.)

- get a consumer report to find out if you have a criminal record as long as they get your written permission first. The consumer report may only include information about your criminal convictions, and not about (1) any arrests that did not lead to a conviction, or (2) your non-criminal offenses, such as disorderly conduct violations.

### HOW YOU CAN IMPROVE YOUR CHANCES

Do you wonder how you can possibly get a job once employers know about your past? Your chances will improve greatly if you plan your answers to these questions and think about how to present yourself. (See *Frequently Asked Questions* at the end.) Also take these steps before you apply for a job:

**STEP ONE: FIND OUT WHAT'S ON YOUR RAP SHEET AND CONSUMER REPORT AND CORRECT ANY MISTAKES. TRY TO UPGRADE "LESS THAN HONORABLE" MILITARY DISCHARGES.**

Most employers run background checks, so it is important that these documents are correct and you know what is in them.

#### **Clean Up Your Rap Sheet:**

Rap sheets might contain mistakes. For example, your rap sheet might show your arrest, but not the fact that the case was dismissed. An employer might assume your case was never resolved. Or your rap sheet might show that you were charged with a felony, but not show the

### Q9. What if the employer requires me to be bonded?

**A9.** Private insurance companies often cannot bond people with drug or criminal records. But there is a government-run, Federal Bonding Program that will bond you if you cannot get private bonding. For information, contact the New York State Department of Labor at 1-800-HIRE-992 or the Federal Bonding Program at 1-800-233-2258.

### Q10. Are there other federal programs that can help me get a job?

**A10.** Yes. The Work Opportunity and Welfare to Work Tax Credit Programs. These programs give private employers a tax reduction when they hire a person with a criminal record or history of drug addiction or alcoholism. To find out more about these programs, contact the New York State Department of Labor at 1-800-HIRE-992.

### FOR MORE INFORMATION

For more information, read these Legal Action Center publications:

- *How to Get and Clean Up Your New York State Rap Sheet*
- *Certificates of Relief from Disabilities and Certificates of Good Conduct: What You Can Do About Criminal Convictions When Looking for Work.*

You can find them at <http://www.lac.org> by clicking on "Free Publications" and then on "Criminal Justice."

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you to pass a medical exam and ask for medical information the employer believes is relevant to your ability to perform the job.

If an employer asks you an illegal question, call the New York State Division of Human Rights at (212) 870-8400, the New York City Commission on Human Rights at (212) 306-7500, or the Legal Action Center at (212) 243-1313.

**Q7. What if I lie about my drug or alcohol history?**

**A7.** We advise you to tell the truth about your drug or alcohol history. If an employer finds out that you lied, the employer legally may deny you the job or fire you for lying.

**Q8. If I told the truth about my drug addiction or alcoholism and was denied the job, is there anything I can do?**

**A8.** Yes. When you are qualified and can perform a job, it is illegal for an employer to discriminate against you because of your past drug problem, past or current alcohol problem, or because you are in treatment, including methadone treatment.

If you think you have been denied a job for these illegal reasons, call the New York State Division of Human Rights at (212) 870-8400, the New York City Commission on Human Rights at (212) 306-7500, or the Legal Action Center at (212) 243-1313.

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final conviction on a lesser charge – a misdemeanor. Mistakes like this make your record look worse than it is.

**Make sure your rap sheet is correct and complete before you apply for a job.** Get a copy of your rap sheet by either contacting the New York State Division of Criminal Justice Services (DCJS) or requesting one through the Legal Action Center. To get your rap sheet through the Legal Action Center, call (212) 243-1313 to schedule an appointment. To contact DCJS, call (518) 485-5763, or write to NYS Division of Criminal Justice Services, Civil Identification Bureau, 4 Tower Place, Albany, NY 12203-3754.

You can “seal” your arrests if they were not followed by a conviction and also can seal convictions for violations (non-criminal offenses). Once they are sealed, they should not show up on the rap sheet an employer gets after fingerprinting you. For information about “sealing,” call the Legal Action Center at (212) 243-1313 on Tuesday or Friday, and see *How to Get and Clean Up Your New York State Rap Sheet*, described at the end.

**Correct Your Consumer Report:**

Consumer reports, which many employers get through “credit reporting agencies,” also might have mistakes. Or they might illegally include “sealed” information. If you believe you have ever been denied a job based on criminal record information in a consumer report, get a

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copy of that report so you can see what is in it and correct any errors. See Frequently Asked Question #5, below, for more information about what to do if an employer denies you a job based on information in your consumer report.

**Upgrade Your Less-Than-Honorable  
Military Discharge:**

See if you can upgrade less-than-honorable military discharges. Contact the Board for Correction of Naval Records ((703) 614-1402) (Navy and Marines), Army Review Board Agency ((703) 607-1600), or Air Force Military Personnel Center (attn: DPMDOA1, Randolph AFB, TX 78150-6001).

**STEP TWO: GET A CERTIFICATE OF RELIEF OR CERTIFICATE OF GOOD CONDUCT.**

When you apply for a job, you want to convince an employer that you have been rehabilitated and that your criminal record is a thing of the past. This is true even if you believe you were unjustly convicted. One way to do this is to get a:

- Certificate of Relief from Disabilities: You are eligible to apply if you have no more than one felony conviction and any number of misdemeanor convictions.
- Certificate of Good Conduct: You are eligible to apply if you have two or more felony convictions and any number of misdemeanor convictions.

These certificates show that New York State considers you to be “rehabilitated.” The certificates also remove

public; (6) and any evidence of rehabilitation that the applicant presents.

If you believe you were illegally denied a job because of your criminal record, you can call the New York State Division of Human Rights at (212) 870-8400, the New York City Commission on Human Rights at (212) 306-7500, or the Legal Action Center at (212) 243-1313 on either Tuesday or Friday.

**Q6. What if a job application form asks if I am or have ever been addicted to drugs or alcohol? Or asks if I am or have ever been in treatment for drug addiction or alcoholism?**

**A6.** Employers may not ask these questions on job applications. They may ask about current or past illegal drug and alcohol use, but they may not ask you anything that indicates you had a past addiction to drugs or have a current or past alcohol problem. It is *legal* to ask: “Have you ever used illegal drugs?” “When is the last time you used illegal drugs?” “Do you drink alcohol?” “Have you ever been convicted of driving under the influence?” It also is legal to require a drug test. But it is *illegal* for an employer to ask questions about how much you drink or how much you used drugs because those questions might reveal an addiction.

Employers may ask if a job applicant has any condition that will prevent them from doing the job. And, *after* offering you a job, employers may require

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for free if you request it within 60 days of the job denial.

Second, make sure the employer had correct information about your criminal record – and, if not, correct it and ask the employer to reconsider you. If a consumer report gave the employer wrong information about your criminal record, bring proof to the employer and ask the employer to reconsider. Also contact the credit reporting agency and demand that the agency correct your report.

Even if the criminal record information the employer used was correct, the job denial might be illegal. In New York, it is illegal to deny someone a job based on a person's conviction(s) unless the conviction record is directly related to the job duties or poses an unreasonable risk to persons or property. (For example, a school bus driver applicant with a recent conviction for driving while intoxicated might legally be denied the job because the conviction is "job related.")

In making a hiring decision about any applicant with a conviction record, the law requires employers to take into account (1) New York's public policy of encouraging the hiring of people with criminal records; (2) the duties of the job; (3) the length of time since the conviction and the applicant's age at the time of the conviction; (4) the seriousness of the record as a whole; (5) the employer's legitimate interest in protecting property, employees and the

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some legal barriers that prevent people with criminal records from getting certain jobs or licenses.

To find out how to get a Certificate of Relief from Disabilities or Certificate of Good Conduct, contact your probation officer or the Legal Action Center on Tuesday or Friday at (212) 243-1313. Or read *Certificates of Relief from Disabilities and Certificates of Good Conduct*, described at the end.

### **STEP THREE: SELL YOURSELF.**

Many employers assume that someone with a criminal record will not be a good employee and will commit more crimes. You must help the employer see you as a person who would no longer commit a crime. You can do this in many ways:

- Show the employer the positive things you have done since your convictions.
- Explain why you had trouble before.
- Describe what you have learned from your mistakes.
- Bring the employer letters of reference from former employers, treatment counselors, a parole or probation officer, minister, or other "impressive" person, and your Certificate of Relief from Disabilities or Good Conduct.

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## FREQUENTLY ASKED QUESTIONS

**Q1. What if the job application asks if I have ever been convicted of a crime? Should I tell the truth?**

**A1.** Yes. Tell the truth. While it is tempting to lie in the hope that the employer will not find out about your criminal record, more and more employers are running criminal background checks, so they will find out anyway. If you lie (directly or by leaving out information or leaving the answer blank), the employer legally may refuse to hire you because you lied or did not answer completely. This is so even if your criminal record itself should not disqualify you from the job.

**Q2. If I lie about my convictions on my job application and get the job, can an employer legally fire me when he finds out?**

**A2.** Yes. Most employers will – and are allowed to – fire you if you lied about convictions or did not disclose them fully, when asked. This is true even if you have been a good employee.

**Q3. If I'm asked to list every arrest and conviction, do I have to list all my arrests?**

**A3.** No. In New York it is illegal for an employer to ask about arrests that were not followed by conviction. If you were acquitted or all the charges were dismissed,

you do not need to tell an employer about that arrest. However, you must list all of your convictions, including your violations, misdemeanors and felonies.

**Q4. Should I explain that my convictions took place when I was still using drugs?**

**A4.** If you explain that your criminal record was the result of your past drug problem, and that you no longer use illegal drugs, the employer may feel that you are less likely to commit another crime.

**Q5. If I tell the truth and I am not hired, is there anything I can do?**

**A5.** Yes! New York prohibits employers from unfairly denying jobs to individuals with past convictions. You can do several things that may help change the employer's decision about hiring you.

First, try to find out if you were denied the job because of your criminal record (not something else). To help you do this, New York law gives you the right to ask the employer for a letter stating why it denied you the job. Employers must give you such a letter within 30 days of your request. Also, if the employer got a consumer report, ask the employer for a copy of the report (which it must give to you promptly) and the name, address and phone number of the credit reporting agency that issued the report. You are entitled to this information under federal law. The credit reporting agency must give you the report