

## OVERVIEW OF STATE LAWS THAT BAN DISCRIMINATION BY EMPLOYERS

As states consider passing laws that prohibit employment discrimination against people with criminal records, it may be helpful to examine how other states have approached this issue. Following is a description of 14 states that have laws concerning prohibiting employment discrimination of individuals with criminal records.

### States that Ban Discrimination by Public Employers

#### **Arizona**

In Arizona, public employers may deny employment on the basis of a conviction, and agencies may deny licenses to persons whose civil rights have been restored **only** if a *reasonable relationship* exists between the conviction and employment or license sought.<sup>1</sup> The law is inapplicable to law enforcement agencies.

#### **Colorado**

Colorado law provides that a felony conviction or other offense involving “moral turpitude” shall not act as an *automatic bar* to obtaining public employment or an occupational license.<sup>2</sup> The statute does not apply to certain positions, including law enforcement and jobs working with vulnerable populations. The statute’s intent is clearly stated: expanding employment opportunities for those who “have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.”<sup>3</sup> Thus, the fact of having a conviction may not, in and of itself, bar employment or licensing.

#### **Connecticut**

In Connecticut, an applicant may not be denied state employment or licensure solely because of a prior conviction.<sup>4</sup> However, a state agency may determine a person is not suitable for the position or license after considering: (1) the relationship between the offense and the job; (2) the applicant’s post-conviction rehabilitation; and (3) the time elapsed since conviction and release.<sup>5</sup> When conducting these determinations, the state employer or licensing agency may not consider arrests that did not lead to conviction, nor records that have been expunged.<sup>6</sup> If a conviction is used as a basis for rejection, a

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<sup>1</sup> Ariz. Rev. Stat. § 13-904(E).

<sup>2</sup> Colo. Rev. Stat. § 24-5-101.

<sup>3</sup> *Id.*

<sup>4</sup> Conn. Gen. Stat. § 46a-80.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also Conn. Gen. Stat. § 31-51i.

written rejection stating the evidence presented and the reasons for the rejection must be completed, and such a rejection must be sent via registered mail to the applicant.<sup>7</sup>

### **Florida**

State employment and licensure may not be denied *solely because of* a conviction.<sup>8</sup> However, this prohibition does not apply if the conviction was for a felony or a first-degree misdemeanor that is *directly related* to the position sought by the applicant.<sup>9</sup> In addition, the prohibition is inapplicable to law enforcement, fire fighting, and correctional agencies.

### **Kentucky**

Kentucky forbids discrimination by public employers and licensing agencies. Public employers and licensing agencies can consider applicants' convictions if they *directly relate* to the employment.<sup>10</sup> Lawyers and some law enforcement personnel are not protected.<sup>11</sup> The statute does not protect many persons with criminal records, as it does not protect persons convicted of "felonies, high misdemeanors, and misdemeanors for which a jail sentence may be imposed," as well as crimes of "moral turpitude."<sup>12</sup>

### **Louisiana**

Louisiana forbids discrimination by public employers and licensing agencies. Agencies may consider applicants' felony convictions if they *directly relate* to the employment. When an applicant is denied employment or licensure because of his or her conviction record, that decision must be made in writing. Thirteen different agencies, ranging from all law enforcement agencies to the State Board of Embalmers and Funeral Directors, are exempted from the statute.<sup>13</sup>

### **Minnesota**

Minnesota does not allow public employers and licensing agencies to refuse to hire or license persons *solely or in part because of* their convictions, unless those convictions *directly relate* to the employment.<sup>14</sup> Furthermore, if the applicant can show competent

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<sup>7</sup> Conn. Gen. Stat. § 46a-80(c).

<sup>8</sup> Fla. Stat. § 112.011.

<sup>9</sup> *Id.*

<sup>10</sup> Ky. Rev. Stat. § 335B.020.

<sup>11</sup> Ky. Rev. Stat. § 335B.070.

<sup>12</sup> Ky. Rev. Stat. § 335B.010(4). "Moral turpitude" is defined by the Second Restatement of Torts as, "an inherent baseness or vileness of principle in the human heart. It means, in general, shameful wickedness, so extreme a departure from ordinary standards of honesty, good morals, justice or ethics as to be shocking to the moral sense of the community." RESTATEMENT (SECOND) OF TORTS § 571 cmt. g (1977).

<sup>13</sup> La. Rev. Stat. § 37:2950.

<sup>14</sup> Minn. Stat. § 364.03.

evidence of sufficient rehabilitation, he or she is not disqualified from licensure or employment.<sup>15</sup>

### **New Mexico**

Public employers and occupational licensing authorities may not use, distribute, or disseminate records of misdemeanor convictions not involving moral turpitude. Convictions may be considered, but cannot operate as an absolute bar to employment or licensing.<sup>16</sup> Applicants may be disqualified based upon felony convictions or misdemeanor convictions involving moral turpitude if they are *directly related* to the position or license sought, or if the individual is deemed insufficiently rehabilitated. Completion of parole or probation or a three-year period following discharge or release from imprisonment without a subsequent conviction will create a presumption of rehabilitation. Regardless of rehabilitation, convictions for drug-trafficking, child abuse, and certain sexual offenses may disqualify an individual for a teaching certificate or child-care licensure or employment. Furthermore, the statute does not cover law enforcement agencies.

### **Washington**

Except for law enforcement agencies and jobs providing unsupervised access to children and vulnerable adults, most public employers and occupational licensing agencies may not disqualify an individual *solely because of* a prior felony conviction. Because the conviction may be considered, however, individuals may be denied employment or a license if the conviction *directly relates* to the position or license sought, and if fewer than ten years have elapsed since the conviction. Regardless of the time elapsed, individuals may be barred from employment in the county treasurer's office based upon a felony conviction of embezzlement or theft, which is an obvious example of a criminal history that has a direct relationship to the business. In addition, guilty pleas or convictions for felony offenses involving certain sexual offenses against children will also bar employment or licensing for many positions in education that involve unsupervised access to children, including teaching.<sup>17</sup>

## **States that Ban Discrimination by Public and Private Employers**

### **Hawaii**

Hawaii prohibits employment discrimination by all non-federal employers, even those with only one employee, based on applicants' criminal records. Employers may consider applicants' convictions insofar as they are *rationaly related* to the employment.<sup>18</sup> Hawaii is unique in forbidding employers in most fields from inquiring about applicants'

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<sup>15</sup> *Id.*

<sup>16</sup> N.M. Stat. §§ 28-2-3, 28-2-4, 28-2-5, and 28-2-6.

<sup>17</sup> Wash. Rev. Code §§ 9.96A.020, 9.96A.060, and 9.96A.030.

<sup>18</sup> Haw. Rev. Stat. § 378-2.5(a).

criminal records until they have extended a conditional offer of employment, and in only allowing employers to consider convictions that occurred within the past ten years.<sup>19</sup>

## **Kansas**

Kansas law provides that for an employer to refuse to hire an applicant, his or her criminal history must *reasonably bear* on his or her trustworthiness or the safety or well-being of the employer's employees or customers.<sup>20</sup> The statute applies to both public and private employers. In addition, the statute limits liability for employers regarding the employment decision, as long as the applicable standard is followed.

## **New York**

The New York State Human Rights Law states that an applicant may not be denied employment or licensure because of his or her conviction record unless there is a *direct relationship* between the offense and the job or license sought, or unless hiring or licensure would create an unreasonable risk to property or to public or individual safety.<sup>21</sup> This law applies to employers with ten or more employees.<sup>22</sup> A person with a criminal record who is denied employment is entitled to a statement of the reasons for such denial.<sup>23</sup> Factors to consider in analyzing whether employment may be denied are found in N.Y. Corrections Law, Article 23-A.<sup>24</sup> In addition, an employer may not inquire about nor act upon an arrest that was terminated or determined in favor of the individual.<sup>25</sup>

Upon request and within thirty days, the applicant must be given a written statement of the reasons why employment was denied. The provisions of this law do not apply to the licensing activities of governing bodies in relation to the regulation of firearms, or an application for employment as a police officer or peace officer.

## **Pennsylvania**

Employers in Pennsylvania may only consider a job applicant's felony or misdemeanor convictions if they relate to the applicant's suitability for employment.<sup>26</sup> Occupational

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<sup>19</sup> Haw. Rev. Stat. §§ 378-2.5(b)-(d).

<sup>20</sup> Kan. Stat. Ann. § 22-4710(f).

<sup>21</sup> N.Y. Exec. Law § 296(15); N.Y. Correct. Law §§ 750 to 753.

<sup>22</sup> *Id.*

<sup>23</sup> N.Y. Correct. Law § 754.

<sup>24</sup> This Article states that the public agency or private employer shall consider the following factors: (a) the public policy of the State to encourage the licensure and employment of people with criminal convictions; (b) the specific duties and responsibilities necessarily related to the license or employment; (c) the bearing, if any, the criminal offense will have on the applicant's fitness to perform job duties or responsibilities; (d) the time elapsed since the criminal offense; (e) the age of the person at the time of the criminal offense; (f) the seriousness of the offense; (g) any information produced by the person, or produced on his or her behalf, in regard to rehabilitation and good conduct; and (h) the legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

<sup>25</sup> N.Y. Exec. Law § 296(16).

<sup>26</sup> 18 Pa. Cons. Stat. § 9125.

licensing agencies may consider any felony, but only *job related* misdemeanor convictions.<sup>27</sup> The applicant is entitled to a written explanation if he or she is denied employment based upon a criminal history, or licensure based upon a conviction.<sup>28</sup>

### **Wisconsin**

Wisconsin prohibits discrimination based on arrest or conviction records in the same manner it prohibits discrimination against members of other protected classes. The statutes apply to employers, labor organizations, employment agencies and licensing agencies. Several types of employers are exempted from the statute<sup>29</sup> and in many cases licensing agencies are not covered.<sup>30</sup>

Employers cannot ask applicants about an arrest record, unless a charge is pending. If an applicant's arrest is pending, employers can refuse to consider hiring him or her if the arrest *substantially relates* to the employment. Employers can only consider convictions insofar as they *substantially relate* to the employment or affect applicants' bondability.<sup>31</sup>

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<sup>27</sup> 18 Pa. Cons. Stat. § 9124(c).

<sup>28</sup> 18 Pa. Cons. Stat. §§ 9124(d), 9125(c).

<sup>29</sup> Wis. Stat. § 111.335.

<sup>30</sup> Wis. Stat. § 111.335 provides that, "is not employment discrimination because of conviction record to deny or refuse to renew a license or permit . . . to a person who has been convicted of a felony and has not been pardoned for that felony."

<sup>31</sup> Wis. Stat. § 111.335.