

# ARE YOU SOMEBODY WITH...

- HIV/AIDS?
- ALCOHOL OR DRUG addiction?
- A CRIMINAL RECORD?

**If so, then you probably have faced discrimination.  
Learn your rights!**

**LEGAL  
ACTION  
CENTER**



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## WHO SHOULD READ THIS BOOKLET?

New Yorkers who have heard things like this:

"You're HIV-positive?  
We'll have to refer you  
to a different dentist."

"Oh, I'm sorry, we  
only hire people with  
clean records."

"We can't have  
people on methadone  
working here."

Reading this booklet can help New Yorkers protect themselves from discrimination based on HIV status, alcohol/drug addiction (past or current), or a criminal record. It also is for their advocates and service providers.

### HOW CAN THIS BOOKLET HELP YOU AVOID DISCRIMINATION?

This booklet will give you information about how to avoid discrimination in employment, housing, health care, insurance, and elsewhere. It also will help you enforce your rights if you do face discrimination. It covers —

- Laws that make it illegal to discriminate against people with HIV/AIDS, alcohol or drug addiction, and criminal records;
- Limits on what employers, landlords, and others may ask;
- How to improve your chances of getting and keeping a job or housing if you have HIV/AIDS, an alcohol or drug addiction, or a criminal record; and
- What you can do when illegal discrimination happens.

There is plenty of discrimination out there. But that does not mean you cannot do something to overcome it. Your chances improve if you **LEARN THE RULES** and **PREPARE**.



# I

## WHICH LAWS PROTECT YOU FROM DISCRIMINATION?

### WHICH LAWS PROTECT YOU FROM DISCRIMINATION?

#### HIV/AIDS AND ADDICTION

Many laws protect people with “disabilities” from discrimination. “Disabilities” includes HIV/AIDS and drug and alcohol addiction. The major anti-discrimination laws protecting people with disabilities are the Americans with Disabilities Act (ADA), Rehabilitation Act of 1973, Fair Housing Act, and New York State and New York City Human Rights Laws.

You do not have to get disability benefits to be protected by these laws. For example, if you have HIV, but are not eligible for disability benefits, you still are protected from discrimination.

Other laws give you the right to equal health insurance coverage for drug and alcohol addiction treatment. Some are known as “parity” laws.

#### CRIMINAL RECORDS

Several laws also outlaw job discrimination because of a criminal record. These include the New York State and New York City Human Rights Laws and Article 23-A of the New York Correction Law. Some cities in New York also have “ban the box” laws that limit when employers may ask about criminal records. Finally, federal laws outlawing race discrimination sometimes protect people with criminal records from discrimination in employment and housing.



## II

### JOB DISCRIMINATION

#### JOB DISCRIMINATION

##### HIV/AIDS AND ALCOHOL OR DRUG ADDICTION

##### **May employers deny you a job, fire you, or treat you differently because you have HIV/AIDS? An addiction?**

Usually not. If you are qualified for the job, it is illegal for employers to discriminate against you because you have –

- HIV or AIDS,
- Past drug addiction, or
- Past or current alcohol addiction

These are all considered “disabilities” under laws that outlaw discrimination against people with disabilities. But these laws do not protect you from job discrimination based on your current illegal use of drugs.

It also is illegal for employers to discriminate against you because you are in treatment for alcohol or drug addiction or take prescribed addiction medication, such as methadone, buprenorphine, or naltrexone.

It is legal, however, for your boss to fire you for not doing your job or for breaking workplace rules. For example, if your job says you have to call in for sick days and you do not, your boss may legally fire you. This is true even if your HIV or alcoholism is the reason you were home sick.

##### **Must employers give you an “accommodation” for HIV/AIDS or an alcohol or drug addiction?**

If you have a disability, you are entitled to “reasonable accommodations” that you need to perform your job, such as changes in your work schedule. But employers do not need to make accommodations that are too costly or too much of a burden. You usually need to ask for the accommodation and may need to provide written proof from your doctor.

## How can employers find out about your HIV status?

### What about your alcohol or drug addiction?

Employers often find out that you have HIV/AIDS or an alcohol or drug addiction through —

- Health related questions on job applications,
- Interviews,
- Medical exams or medical questionnaires,
- Drug tests, or
- Drug- or alcohol-related arrests or convictions.

### What do employers have the right to know?

It depends on when the employer is asking.

#### Job Applicants

Before offering you a job, employers may not ask about your disabilities. These questions are illegal:

- “Do you have HIV or AIDS?”
- “Have you ever been in alcohol or drug treatment?”
- “Have you ever been addicted to drugs or alcohol?”

But it is legal for employers to ask if you have a physical or mental condition that might make you unable to do the job. They may also ask about current or past alcohol or illegal drug use. These questions are legal:

- “Have you ever used illegal drugs?”
- “Do you drink alcohol?”
- “Have you ever been convicted of driving under the influence?”

It is also legal for an employer to make you take a drug test. But it is illegal for an employer to ask how much you drink or how much you used drugs because those questions might reveal an addiction.

## After job offer – before job starts

After a job offer that is conditioned on passing a medical exam or filling out a medical form, it is legal for employers to require you to answer medical questions or pass a medical exam if everyone in the same job category is asked the same questions or required to take a medical exam. This means that it is illegal for an employer to ask only you to take a medical exam and drug test just because the employer knows you are in recovery.

#### Current Employees

Once you start work, your employer may only require a medical exam or ask for medical information if the employer reasonably believes that you have a medical condition that could hurt your job performance or be a “direct threat” in the workplace.

### Do employers have to keep your medical information confidential?

Yes, if the employer gets the information from a required medical exam, a voluntary health program on the work site, or because you asked for a “reasonable accommodation.” Your employer must also keep confidential any HIV or alcohol/drug treatment information provided by your treating provider, with your written consent.

The law is not as clear about the privacy of medical information your employer gets in other ways. For example, if you tell your boss you are upset because you just found out you have HIV, some courts have ruled that your boss would not have to keep that information confidential. On the other hand, the Equal Employment Opportunity Commission (which enforces the Americans with Disabilities Act) has said that employers must keep medical information about employees and applicants confidential even if they learned it through social media.

### Is it legal for your doctor to tell your employer that you have HIV/AIDS?

Only with your written consent to disclose your HIV status. Article 27-F of New York’s Public Health Law says that most health and social service providers must keep HIV information confidential. For more information, see *HIV/AIDS: Testing, Confidentiality & Discrimination. What you need to know about New*

York Law (listed at the end). But if your employer legally requires this information (see pages 3 and 4), and you do not sign a consent form for your doctor to disclose your HIV status, the employer may legally deny you the job.

Ask your doctor to read medical forms carefully to make sure HIV information really is required. For more information about filling out medical forms, read *To Disclose or Not to Disclose* (listed at the end).

### Is it legal for your alcohol or drug treatment program to tell your employer about your treatment?

Not without your written consent. Federal confidentiality laws require alcohol and drug treatment and prevention programs to get written consent before disclosing information about their patients' alcohol or drug treatment. This is true even if your employer has required you to attend a treatment program. As mentioned above, however, your employer may sometimes legally require written proof about your treatment. If you do not agree to the program's giving that information, you might be fired.

### What can you do if an employer asks an illegal question or discriminates against you?

Call or visit the websites of –

- New York State Division of Human Rights (888-392-3644)
- New York City Commission on Human Rights (212-306-7450)
- New York State Attorney General's Office (800-771-7755)
- U.S. Equal Employment Opportunity Commission (800-669-4000)
- Legal Action Center (212-243-1313)

***There are deadlines, so call soon after the illegal act occurs!***

## CRIMINAL RECORDS

### What's on your record?

To understand your rights, you need to know if you have a criminal record and what is on it. The fact that you have been arrested DOES NOT always mean you have been convicted of a "crime." Here are some important words to understand:

- **Felonies and misdemeanors** – these ARE "crimes." If you have been convicted of a felony or misdemeanor, you have a "criminal conviction," even if you did not go to trial or did not serve any time.
- **Violations** – these are non-criminal convictions, or "offenses." If you have been convicted of a violation, but have no felony or misdemeanor convictions, then you have a "conviction" but not a "criminal conviction."
- **Youthful offender adjudications (YOs)** – these are NOT "convictions" or "crimes." They are adjudications for eligible youth ages 16-18. Adjudications are "findings."
- **Juvenile offender (JOs)** – these ARE "crimes." Youth aged 13-15 may be convicted of a JO in adult court for certain violent felonies.
- **Juvenile delinquencies (JDs)** – these are NOT "convictions" or "crimes." They are adjudications for eligible youth ages 7-15. Adjudications are "findings."
- **Dismissals, acquittals and decline to prosecute** – these are arrests where you were NOT convicted.

## What May New York State Employers Legally Ask?

Most employers in New York may only ask about the convictions with a “yes” in the box, below. There are some exceptions, however, for law enforcement, the Port Authority, and federal jobs and clearances.

TYPE OF OFFENSE	YES	NO
Unsealed Felony	•	
Sealed Felony*		•
Unsealed Misdemeanor	•	
Sealed Misdemeanor*		•
Unsealed Violation	•	
Sealed Violation		•
Youthful Offender		•
Juvenile Offender	•	
Juvenile Delinquent		•
Dismissals (of all counts)		•
Pending Arrests	•	

\*In New York, there are only a few types of felony or misdemeanor convictions that can be sealed. For more information, see *Lowering Criminal Record Barriers* (listed at the end).

## When can employers find out about your convictions?

Some cities and counties have “ban-the-box” laws. These laws delay when employers may ask about criminal records and are listed below.

- **New York City (Fair Chance Act/FCA):** This law makes it illegal for most employers in New York City to ask about a job applicant’s criminal record before making a job offer that is conditioned on a background check. After the job offer, employers can ask questions or require a criminal record check. Most employers also may not mention criminal records or back-

ground checks in job postings or on job applications. In addition, the Fair Chance Act requires most employers to follow specific steps before denying a job because of a criminal record.

- **Other cities and counties: Buffalo, Dutchess County, Ithaca, Kingston, Newburgh, Rochester, Syracuse, Tompkins County, Ulster County, Woodstock, and Yonkers.** The laws in these areas generally delay when employers may ask about a criminal record. But they do not provide the additional protections in New York City’s law.

Not all employers are required to follow these ban-the-box laws. For more information, read *Criminal Records and Employment* (listed at the end). When ban-the-box laws do not apply, employers may ask about your criminal record at any time, but there are laws that provide protections that are discussed below.

## How can employers find out about your convictions?

Employers often find out that applicants have a criminal record by –

- Asking questions, either in writing or in person. When employers are allowed to ask these questions depends on if there is a ban-the-box law (see above).
- Getting a criminal background report (sometimes called a “credit report” or “consumer report”) from a background check company that gets the information from the courts or other public sources. These reports should include only felony and misdemeanor convictions that are not sealed. Federal and state laws require employers to ask for your consent before getting this report, and to give you a copy before using it to make a negative decision about your employment.
- Fingerprinting you to get your “rap sheet” from the New York State Division of Criminal Justice Services or FBI. Only some employers can get your fingerprint-based rap sheet. Usually, this rap sheet will include felony, misdemeanor and violation convictions that are not sealed. But rap sheets for some law enforcement and federal jobs will include sealed information. For more information, see *Lowering Criminal Record Barriers: Certificates of Relief/Good Conduct and Record Sealing* (listed at the end).



## May employers deny you a job or fire you because of your convictions?

It is illegal for most employers in New York to deny you a job or fire you because of past convictions unless they are “directly related” to the job in question OR hiring you would create an “unreasonable risk” to the safety of people or property. These legal protections are in Article 23-A of the New York Correction Law and the New York State and New York City Human Rights Laws.

When deciding whether to hire or license you, employers must look at your age when convicted, the number of years passed, the job duties, and evidence of your rehabilitation – positive changes since your conviction, including a Certificate of Relief from Disabilities or Certificate of Good Conduct (details below). Employers who will not hire anyone with a conviction or a certain type of conviction are violating the law!

It is also illegal for most employers to deny you a job, fire you, or discriminate against you because of arrests that did not lead to a conviction (unless the case is still open), sealed felonies, misdemeanors or violations, or youthful offender (YO) adjudications.

These laws also apply to government agencies that license people to work. But they do not apply to law enforcement, peace officer, Port Authority or federal jobs or clearances.

## What should you do if an employer asks an illegal question?

If you are asked an illegal question, visit the Legal Action Center’s website, [www.lac.org/faqs](http://www.lac.org/faqs), or contact the Center at (212)243-1313.

## Should you tell the truth about your criminal convictions on a job application?

If the question is legal, always tell the truth. While it is tempting to lie in the hope that the employer will not find out about your criminal record, most employers are running criminal background checks and will find out anyway. If you lie, leave out some information or leave the answer blank, the employer legally may deny you the job or later fire you. This is true even if your criminal record should not have disqualified you or you would have been a good employee.

If the question is or might be illegal, visit the Legal Action Center’s website, [www.lac.org/faqs](http://www.lac.org/faqs), or contact the Center at (212)243-1313.

## How can you improve your chances of getting a job?

Your chances will improve greatly if you prepare! Try the following steps:

**Step 1:** Find out whether there are ban-the-box laws where you are applying for work so you know when employers are legally allowed to ask about your convictions.

**Step 2:** Get your rap sheet and correct any mistakes. You cannot correctly answer criminal record questions on a job application if you do not know what is on your rap sheet. Find out what is on your rap sheet and correct any mistakes. (Mistakes are very common!) You can get your rap sheet by calling the New York State Division of Criminal Justice Services (DCJS), (518) 457-9847, or the Legal Action Center, (212) 243-1313. Read *Your New York State Rap Sheet: A Guide to Getting, Understanding, and Correcting Your Criminal Record* (listed at the end).

**Step 3:** Get a Certificate of Relief from Disabilities or Certificate of Good Conduct. These certificates help show “rehabilitation.” They also remove some legal barriers that stop people with criminal records from getting jobs or licenses. Read *Lowering Criminal Record Barriers: Certificates of Relief/Good Conduct and Record Sealing* (listed at the end).

**Step 4:** Tell the employer about your strengths. Many employers assume that people with criminal records will not be good employees and will commit more crimes. Be prepared to show all the positive things you have done since your convictions. Read *How to Gather Evidence of Rehabilitation* (listed at the end).

### What can you do if you were denied a job or fired because of your criminal record?

**Step 1: If there are ban-the-box laws** where you applied for a job, did the employer violate them? If so, see Step 5.

**Step 2: Ask why you were denied the job.** It helps to know if it was because of your criminal record, and not something else. New York law gives you the right to ask the employer for a letter explaining why it denied you the job. For a sample, see *Model Letter Asking for Written Explanation for Job Denial and Copy of Background Check* (listed at the end).

**Step 3: Ask the employer for a copy of any background report used to deny you the job.** Employers are required to give you the report before denying you the job or firing you, but employers often fail to do this. The employer also must give you the name, address and phone number of the background check company that wrote the report. That company must give you the report free of charge if you ask within 60 days of being denied the job or fired. For a sample, see *Model Letter Asking for Written Explanation for Job Denial and Copy of Background Check* (listed at the end).

**Step 4: Make sure the information the employer used was correct!** If the background report gave wrong information about your criminal record, bring proof to the employer and ask the employer to change its decision. Also call the background check company and demand that it correct your report. Provide proof if you can. Background check companies do not always do a proper investigation, even though the law requires them to investigate and correct mistakes. For help, contact the Legal Action Center.

**Step 5: Consider filing a complaint.** Even if the criminal record information is correct, the employer might have violated Article 23-A of the New York Correction Law or the Human Rights Laws, described above. If you think the employer violated any of these laws, call the New York State Division of Human Rights at (888) 392-3644 or the New York City Commission on Human Rights at (212) 306-7450.

The employer may also have violated federal race discrimination laws. You may call the U.S. Equal Employment Opportunity Commission at (800) 669-4000 to file a complaint.

You also may call the Legal Action Center at (212) 243-1313 for help with any of these issues.





# III

## HOUSING DISCRIMINATION

### HOUSING DISCRIMINATION

#### HIV/AIDS AND ALCOHOL OR DRUG ADDICTION

##### May landlords refuse to rent to you because you have HIV/AIDS or an addiction?

**No.** If you are qualified for the housing, it is illegal for a real estate broker or anyone renting (or selling) a home or apartment to discriminate against you because you have HIV/AIDS, past drug addiction, or alcohol addiction (past or present). These are all considered disabilities” under laws that outlaw discrimination against people with disabilities, just like in employment.

##### May landlords ask about your HIV status or drug or alcohol addiction?

**No.** Landlords, sellers, and brokers may not ask you about your HIV/AIDS, past drug addiction, or alcohol addiction (past or present), but they may ask you about illegal drug use and refuse to rent or sell to you if you are currently using drugs illegally.

##### What if a landlord finds out about your HIV/AIDS or drug or alcohol addiction? May the landlord evict you?

**No.** A landlord may not harass or evict you because of your disabilities. But it is legal to evict you for using drugs illegally or selling drugs.

##### May your landlord or neighbors legally tell others that you have HIV/AIDS?

**Usually, yes.** New York’s HIV confidentiality law does not usually apply to landlords and neighbors. It only applies if your landlord or neighbor learned your HIV status from your health or social service provider after you signed a consent form permitting that disclosure. It also applies to landlords that provide supportive or other special housing through contract with local government HIV agencies.

## What can you do if you were denied housing because of your HIV status or drug or alcohol addiction?

Call or visit the websites of –

- New York State Division of Human Rights (888-392-3644)
- New York City Commission on Human Rights (212-306-7450)
- New York State Attorney General's Office (800-771-7755)
- Legal Action Center (212-243-1313)

***There are deadlines, so call soon after the illegal act occurs!***



## CRIMINAL RECORDS

### May landlords refuse to rent to you because of your criminal record?

**It depends.** New York law does not specifically ban housing discrimination based on a criminal record. But there are limited protections elsewhere:

- Landlords may not deny you housing because of arrests that did not lead to a conviction, according to the United States Department of Housing and Urban Development (HUD). They also may not exclude all people with criminal convictions. In considering your criminal record, they must take into account things like the type of crime and length of time since conviction.
- Federally funded housing, such as Section 8, local public housing, and private housing that gets federal funding may not exclude all people with criminal records. They may only exclude people whose convictions create a threat to others or to property. Most local housing authorities deny admission to people with certain types of convictions for a set number of years. For example, someone with an A Felony might be excluded for five years. But people often can gain admission anyway by showing that they have been rehabilitated.
- State-funded housing providers also may not freely discriminate against people with criminal records. Landlords have to decide individually whether to admit people with criminal records. They have to consider factors like the seriousness of the offense, the time since the offense, the age of the applicant at the time of the crime, and evidence of rehabilitation.

## IV

HEALTH CARE, EDUCATION,  
AND OTHER DISCRIMINATIONHEALTH CARE, EDUCATION, AND OTHER TYPES  
OF DISCRIMINATION

## HIV/AIDS AND ALCOHOL OR DRUG ADDICTION

**May doctors, schools, and government programs discriminate against you because you have HIV/AIDS? Addiction?**

**No.** Health care providers, schools, government agencies, and many other places and programs are not allowed to discriminate against people with disabilities. For example:

- Places open to the public. Places like health care providers, schools, and camps that are privately run but open to everyone may not discriminate against people with disabilities. Examples:
  - Doctors and dentists may not refuse to treat you because you have HIV/AIDS. This is true even if you are currently using drugs illegally.
  - Colleges and job training programs may not turn you away or treat you differently from other participants because you have HIV/AIDS or are in recovery from addiction. This includes programs to train medical assistants. They also must provide reasonable accommodations you need to participate.

To file a complaint for this type of discrimination, call –

- New York State Division of Human Rights (888-392-3644)
- New York City Commission on Human Rights (212-306-7450)
- New York State Attorney General's Office (800-771-7755)
- U.S. Department of Justice at (800-514-0301)

- Government agencies and programs. Jails, prisons, courts, child welfare programs, public assistance, Medicaid, job training programs, and every other type of government program or activity may not discriminate against people with disabilities. Example:
  - Judges, probation, parole and child welfare agencies may not require you to get off addiction medication (methadone, buprenorphine, naltrexone) if you meet other requirements for child custody, probation, drug court, etc. For more information, read our *MAT Advocacy Toolkit* (listed at the end).

To file a complaint against a government agency, contact the federal agency that funds, operates, or regulates the program. The ADA Information Line, (800) 514-0301, can help.

### Can you be denied life insurance because you have HIV/AIDS?

**Yes.** It is legal for insurers to require an HIV test and deny you insurance if you are HIV-positive. But you sometimes can get life insurance through your employer even though you are positive. You also can get it through some insurance companies, though these policies are expensive.

### Can you be denied health insurance because you have HIV or a substance use disorder?

**No.** It is illegal to deny you health insurance because of your HIV status, substance use disorder, or any other pre-existing condition. This is true whether you buy the insurance on your own or get it through work. It is also illegal to charge you more for insurance because of your HIV status or addiction.

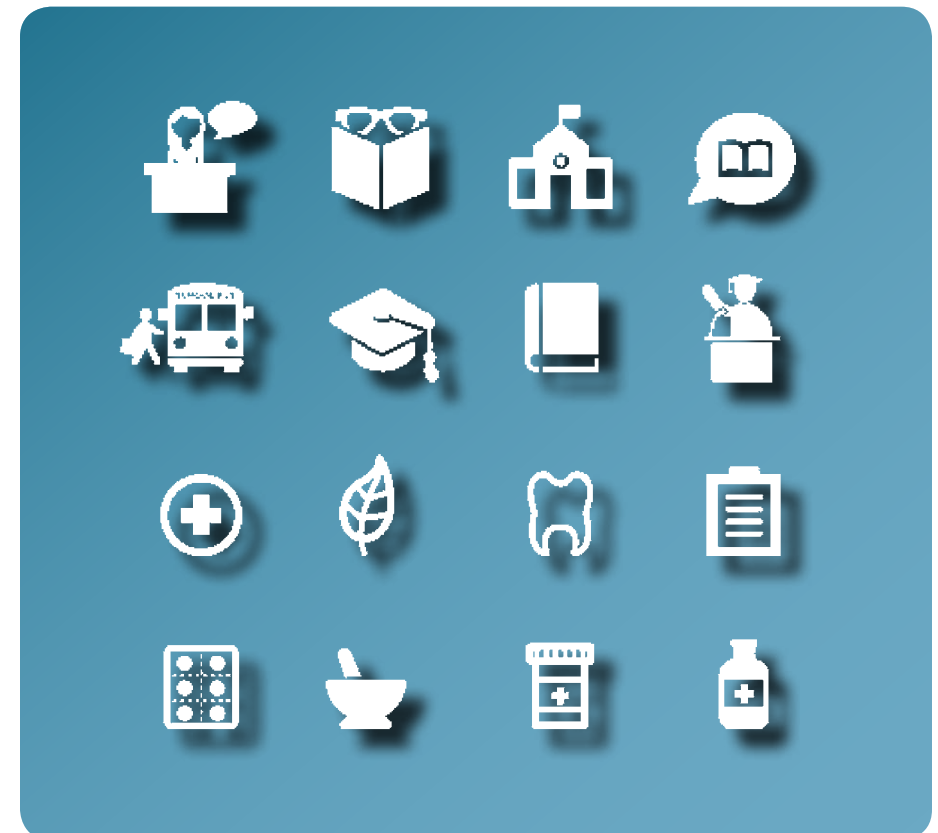
### What can you do if your insurance company will not pay for substance use disorder care?

Insurance companies who do not pay for your alcohol or drug treatment may be violating any number of laws. This includes “parity” laws which require insurance plans that cover substance use disorder and mental health care to cover it equally with coverage for medical conditions.

## CRIMINAL RECORDS

### Are people with criminal records protected from discrimination in anything besides employment, occupational licensing, and housing?

**No.** The anti-discrimination protections only apply to employers, occupational licensing agencies, and to a limited extent, housing.





## FOR MORE INFORMATION

### FOR MORE INFORMATION

For more information, visit the Legal Action Center's website at [www.lac.org](http://www.lac.org). Click "Need Legal Help?" to read our frequently asked questions. Also check out "Resources" for free publications, webinars, and more, including those listed below. Many are available in Spanish.

#### HIV/AIDS

- To Disclose or Not to Disclose: Seven Things to Know About Medical Forms and HIV
- HIV Confidentiality
- HIV/AIDS: Testing, Confidentiality & Discrimination. What you need to know about New York Law

#### Drug and Alcohol Addiction

- MAT Advocacy Toolkit
- Know Your Rights: Are You in Recovery from Alcohol or Drug Problems?

#### CRIMINAL RECORDS

- Your New York State Rap Sheet: A Guide to Getting, Understanding, & Correcting Your Criminal Record
- Lowering Criminal Record Barriers: Certificates of Relief/Good Conduct and Record Sealing
- Criminal Records and Employment
- How to Gather Evidence of Rehabilitation
- Model Letter Asking for Written Explanation for Job Denial and Copy of Background Report

Or call the Legal Action Center at (212) 243-1313. If your question is about a criminal record, you may be told to call back at a later date because the Center gets far more criminal record-related calls than its staff can handle. If you have HIV or an alcohol or drug addiction and tell the receptionist, you may get help more quickly. The Center has special funding to deal with those calls.

NOTES



GOOD LUCK.

**Remember:  
You have a better chance  
to overcome discrimination  
if you know your rights!**



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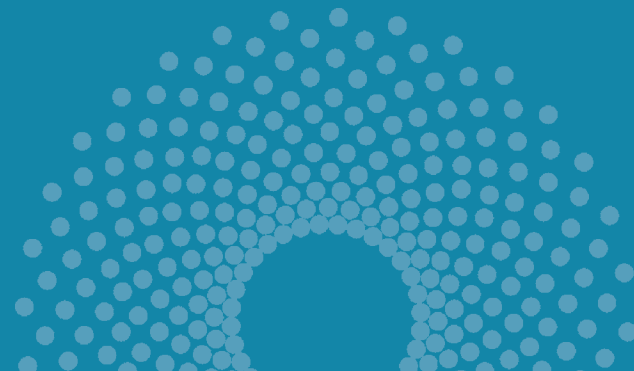
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