

# The New York Clean Slate Act Goes Into Effect

## What Employers Need to Know

2 min read

Dec 16, 2024

On November 16, 2024, the New York Clean Slate Act (the “Act”) went into effect. Under the Act, certain conviction records will be automatically sealed from public access after a specified time period. The New York State Unified Court System is responsible for sealing all eligible existing conviction records, after which such convictions will become inaccessible.

## Eligibility for Sealing

Under the Act, most misdemeanor and felony charges are eligible for automatic sealing:

- Misdemeanor convictions are sealed three years after an individual’s release from incarceration or from the imposition of sentencing; and
- Felony convictions are sealed eight years after an individual’s release from incarceration or from the imposition of sentencing.

## Situations Where Convictions Will Not Be Sealed

Convictions will **not** be sealed if:

- There is a pending criminal charge against the individual;
- The individual is under the supervision of probation or parole;
- The conviction is for a sexual offense or sexually violent offense; or
- The conviction is for a non-drug related Class A felony of the New York State Penal Law, such as murder and kidnapping.

Additionally, the Act does not apply to out-of-state or federal convictions. Moreover, employers required by law to conduct “fingerprint-based” background checks, including employers working with children, the elderly, individuals with disabilities, or other vulnerable populations, will continue to have access to criminal records otherwise sealed.

## Employer Notice Requirements

Employers that receive criminal history information as part of an applicant or employee’s background check are required to provide a copy of that criminal history information to the individual and inform that individual of “their right to seek correction of any incorrect information.”

Additionally, an employer must provide the individual with a copy of Article 23-A of the New York Correction Law. These notice requirements apply regardless of whether the employer is contemplating making an employment decision based on the individual’s criminal history information.

## Employer Inquiries

The Act amends the New York State Human Rights Law by making it an unlawful discriminatory practice for employers to inquire about or to adversely act against an individual based upon sealed convictions.

## Negligence Claim

The Act also amends Section 50-g of the New York Civil Rights Law, by creating a private right of action against an employer who, without the individual’s consent, knowingly and willfully discloses a sealed conviction. To succeed in said claim, an individual must demonstrate:

- The employer owed them a duty of care;
- The employer knowingly and willingly breached such duty;
- The disclosure caused injury; and
- The employer’s breach of duty was a substantial factor in the individual’s injury.

The Act also provides employers with an affirmative defense against negligent hiring, retention, and supervision claims, such that litigants are prohibited from introducing an employee’s sealed conviction record as evidence of an employer’s negligence when the employer conducted a background check and the report did not contain such sealed conviction records.

## Takeaways

- New York employers that conduct criminal background checks must ensure they are in compliance with the Clean Slate Act.

- Employers that obtain criminal history information must provide that information to the applicant or employee and notify such individuals of their right to seek correction of any incorrect information.
- Employers should also be mindful not to make any employment decision based on an individual's sealed conviction record.

---

*Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit [www.hinshawlaw.com](http://www.hinshawlaw.com) for more information and follow @Hinshaw on LinkedIn and X.*

## Topics

New York, Employment, Criminal History, New York State Human Rights Law, Employer, Employee, Criminal Conviction, Labor And Employment

## Related Capabilities

Labor & Employment

## Tags

Example Tag