



LEGAL  
ALERT

## NEW YORK LEGISLATURE AMENDS LAW REGARDING UNLAWFUL DISCRIMINATORY EMPLOYER PRACTICES

The New York legislature has amended the rules governing unlawful discriminatory employer practices to specifically address youthful offenders and sealed convictions for non-criminal violations.

The law proscribes certain inquiries and/or employment decisions based on related information as unlawful discrimination. The law specifically addresses inquiries being made of a potential employee in the interview process. Prior to the current amendment, the law prohibited any employer, in connection with the employment of an individual, from inquiring about or acting adversely upon that individual on account of an arrest or criminal accusation, if such arrest or accusation was followed by the termination of the related criminal action or proceeding in favor of the individual.

The amendment, effective as of November 1, 2007, extends this prohibition to inquiring about or acting adversely upon that individual on account of either:

- A youthful offender adjudication; or
- A conviction for any non-criminal violation which by statute shall remain sealed.

Notwithstanding the foregoing, an exception does apply to an arrest or accusation that is then-pending. Also exempt from the statute are applicants for employment in any law enforcement agency.

We therefore recommend the following:

- New York employers should be extremely cautious in inquiring about or taking adverse actions against individuals based on prior arrests or accusations both in written applications as well as in interviews;
- Any employee or interviewee questionnaires, including employment applications, should be reviewed by legal counsel;

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- Employee agreements, manuals and other policies outlining corporate policies with regard to arrests or criminal accusations should be reviewed by legal counsel;
- Employers should have training sessions and establish hiring protocols for company owners, human resource departments and other managers making employment decisions in an effort to avoid an accidental violation of the law; and
- This newsletter is not a substitute for legal advice. Therefore, contact legal counsel as to the specific approach you should take given your particular facts.

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