

## Employment Alert: New York Enacts New Laws Regarding Background Checks and Hiring

2/9/2009

Effective February 1, 2009, New York employers must comply with new notice requirements regarding background checks for job applicants and employees. These new notice requirements supplement existing notice requirements under New York's General Business and Labor Laws, and require:

employers requesting an investigative consumer report about a job applicant or employee to provide the job applicant or employee with a copy of Article 23-A of the Corrections Law: "Licensure and Employment of Persons Previously Convicted of One or More Criminal Offenses";

employers who receive an investigative consumer report containing criminal conviction information about a job applicant or employee to provide a copy of Article 23-A to the job applicant or employee; and

employers to post a copy of Article 23-A of the New York State Corrections Law in an area that is largely visible to their employees.

Article 23-A prohibits employers from refusing to hire a job applicant or from taking any adverse action against a current employee based on a prior criminal conviction or because the employer believes the job applicant or employee does not have "good moral character" as a result of a prior criminal conviction. Despite this prohibition, employers may still deny a job applicant employment or take an adverse action against an employee if:

a direct relationship exists between one or more of the prior convictions and the specific employment sought or held by the person, or

hiring the job applicant or permitting the continued employment of an employee would involve an unreasonable risk to property or to the safety or welfare of specific persons or the general public.

Prior to February 1, 2009, Article 23-A had only applied to job applicants rather than job applicants and current employees.

The recent amendments to New York's General Business and Labor Laws signal a willingness by New York to protect individuals with prior convictions from employment discrimination and increase the likelihood of litigation in this area. Employers should be aware of each of New York's notice requirements regarding criminal background checks. If you have any questions regarding the subject covered in this alert, or any related issue, please feel free to contact any of Mintz Levin's Labor, Employment and Benefits practice attorneys.

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*For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.*

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