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NEW YORK CREATES ADDITIONAL EMPLOYMENT PROTECTIONS FOR INDIVIDUALS WITH CRIMINAL RECORDS

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Attorneys in the Employment Litigation & Policy Practice represent corporate employers throughout the United States in all types of employment matters. To learn more about the SHB employment group and its members, see [SHB.com](#).

Starting on February 1, 2009, New York employers will be required to comply with new legislation that creates additional rights for individuals with criminal records. These amendments to New York's employment and labor laws relate to other legislation that recently took effect in the state.

The first law, which went into effect September 2008, protects employers from negligent hiring lawsuits related to an employer's hiring and/or retention of previously convicted persons. This law creates a rebuttable presumption that evidence about the employee's past criminal history will be excluded from trial so long as the employer made a good faith effort to hire and/or retain the employee based on the factors provided in Article 23-A of the New York Correction Law.

Article 23-A, which prohibits unfair discrimination against ex-offenders, lists the following factors to be considered in the hiring and/or retention of individuals previously convicted of a criminal offense:

1. New York's policy of encouraging employment of previously convicted persons;
2. The employee's job duties;
3. Whether the criminal offense has any bearing on the person's ability to perform his/her job duties;
4. The time elapsed since the criminal offense;

5. The applicant's age at the time of the offense;
6. The seriousness of the offense;
7. Information regarding the person's rehabilitation and good conduct;
and
8. The employer's interest in protecting property and the safety and welfare of specific individuals or the general public.

Under the more recent amendments, employers will be required to post a copy of Article 23-A in a "visually conspicuous manner" in an accessible workplace location. Employers will also be required to provide applicants or employees with copies of Article 23-A if the employer performs background checks on those individuals. A copy of Article 23-A can be found at the New York State Department of Labor Web site:

<http://www.labor.state.ny.us/agencyinfo/PDFs/CorrectionLaw%20Article%2023-A%204.pdf>

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