SOME EXAMPLES:

You applied for a job and the application inquires if you've ever been convicted of a criminal offense. You don't feel comfortable disclosing your felony conviction (which has not been sealed). Do you have to answer honestly?

Yes. You must answer the question honestly. Should the employer determine at a later time that you made an intentional misrepresentation on your application, the employer may refuse to hire you or terminate your employment.

You were arrested for a criminal offense but no charges were ever filed. Can an employer or housing provider inquire about this arrest?

No. It would be unlawful to inquire about this arrest in any manner.

You apply for a job as a cable television installation specialist. The job requires you to install cable service in customers' homes. During the interview process, your recent conviction for aggravated assault is disclosed. You do not get the job and believe the reason is your conviction record. Is this legal?

If the employer weighed the factors described in this brochure and concluded that the conviction impacted your fitness and ability to perform the job duties, the decision would likely be in compliance with the law.

You apply for a firearms license and disclose your five previous arrests, all of which were resolved in your favor. Your application is denied based upon your prior arrests. Is this legal?

Yes, public agencies regulating firearms are not covered by the arrest record provisions of the law.

HOW TO FILE A COMPLAINT

If you believe that you have been discriminated against because of an arrest record resolved in your favor or adjourned in contemplation of dismissal, sealed conviction records, or a youthful offender adjudication, or because of a criminal conviction record, you can file a complaint with the New York State Division of Human Rights.

A complaint must be filed with the Division of Human Rights within one year of the alleged discriminatory act.

The Division only accepts complaints of conviction record discrimination with regard to private employers (unless the conviction has been sealed). Those claiming discrimination by public agencies must bring an action in state court.

To file a complaint:

- Visit the Division's website, at **WWW.DHR.NY.GOV,** and download a complaint form. Completed complaints must be signed before a notary public, and returned to the Division (by mail, email, fax, or in person).
- Stop by a Division office in person.
- Contact one of the Division's offices, by telephone or by mail, to obtain a complaint form and/or other assistance in filing a complaint

For more information or to find the regional office nearest to your home or place of employment, visit our website at: **WWW.DHR.NY.GOV.**

NEW YORK STATE | Division of Human Rights

Protections Under the Law for People With ARREST AND CONVICTION RECORDS

ONE FORDHAM PLAZA
BRONX, NEW YORK 10458
1-888-392-3644
TTY: 718-741-8300
WWW.DHR.NY.GOV

The New York State Human Rights Law

It is the public policy of the State of New York to ensure that New Yorkers with arrest records resolved in their favor or adjourned in contemplation of dismissal, sealed conviction records, or youthful offender adjudications, and those convicted of criminal offenses, participate in the personal and economic opportunities of this State.

To help facilitate this goal, the State has enacted protections, which are found in the Human Rights Law at § 296.15 and § 296.16. The protections fall into the following two categories:

Those with an arrest record resolved in their favor or adjourned in contemplation of dismissal, sealed conviction records, or youthful offender adjudications; and

Those who have been convicted of a criminal offense.

The Law for Those With an Arrest Record Resolved in Their Favor, an Adjournment in Contemplation of Dismissal, a Sealed Conviction Record, or a Youthful Offender Adjudication

If you have an arrest or criminal accusation that was resolved in your favor or adjourned in contemplation of dismissal, a sealed conviction record, or a youthful offender adjudication, you cannot be asked about it, or discriminated against because of it in connection with employment (including volunteer positions), licensing, housing, or the provision of credit or insurance.

These prior arrest protections were extended to housing and volunteer positions, effective July 11, 2019.

The Law offers broad protection by declaring it unlawful to "make any inquiry about, whether in any form of application or otherwise, or to act adversely to any individual" with respect to an arrest that was resolved in his/her favor or adjourned in contemplation of dismissal, a sealed conviction record, or a youthful offender adjudication. The Law explicitly provides that if you are asked an unlawful question, you may answer as if the protected arrest, conviction or adjudication never occurred.

The protections described above do not apply to governmental agencies involved in the licensing of guns, firearms, and other deadly weapons, or in the employment of police officers or peace officers. In those situations, the agency may ask about and consider an arrest resolved in your favor, a sealed conviction record, or a youthful offender adjudication.

The Law for Those With a Conviction Record

If you are applying for employment or a job-related license you must disclose any prior convictions (unless they have been sealed) to your the employer or licensing agency if you are asked to do so.

An employer or licensing agency is permitted to inquire about convictions for criminal offenses (unless they have been sealed), but may not deny employment or a job-related license, unless there is a direct relationship between the conviction and the license or employment sought, or unless issuing the license or granting the employment would involve an unreasonable risk to property or the safety and welfare of others.

In determining this, the employer must consider the following factors:

- New York's public policy to encourage licensure and employment of those with previous convictions.
- The specific duties and responsibilities necessarily related to the license or employment sought.
- The bearing, if any, the criminal offense, for which the person was previously convicted, will have on his/her fitness or ability to perform such duties or responsibilities.
- The time that has elapsed since the occurrence of the criminal offense.
- The age of the person at the time of the occurrence of the criminal offense.
- The seriousness of the criminal offense.
- Any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct.
- The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.