

New York Bars Insurers from Denying Commercial Crime Coverage Due to Employee's Prior Criminal Conviction

By **Susan M. Corcoran, Richard I. Greenberg, David S. Greenhaus, Christopher M. Valentino, Bradley M. Pryba and Nadav Zamir**

January 12, 2017

The New York State Department of Financial Services (NYSDFS) has promulgated a regulation that requires insurance companies to provide Commercial Crime Coverage to employers who have prior knowledge of an employee's prior criminal conviction. Commercial Crime Coverage is defined as coverage under a policy of commercial risk insurance that provides burglary and theft insurance or fidelity insurance.

NYSDFS was created in 2011, replacing the New York State Banking and Insurance Departments. It supervises many different types of financial services institutions, including insurance companies. The Department has a stated goal of guarding against

Meet the Authors



Susan M. Corcoran

Principal
White Plains

914-872-6871
Susan.Corcoran@jacksonlewis.com

fraud and financial crises, as well as modernizing regulation of financial services in New York. Its regulations can have ripple effects for companies dealing with financial services institutions and insurance companies.

The new regulation (Title 11 of the New York Codes Rules and Regulations Part 76), issued by NYSDFS on December 6, 2016, applies *only* to insurers whose insured has engaged in a Correction Law Article 23-A analysis.

The Correction Law forbids *discriminating* based upon a conviction for a previous criminal offense, unless there is a direct relationship between the criminal offense and the employment sought. The Correction Law specifies eight factors, including the public policy of the state, when analyzing whether there is a “direct relationship.”

Eight Factors

Eight factors to determine a “direct relationship” under Article 23-A:

1. The state public policy encouraging the employment of persons previously convicted of one or more criminal offenses;
2. The specific duties and responsibilities necessarily related to the employment sought or held by the person;
3. The bearing, if any, the criminal offense(s) will have on the person’s fitness or ability to perform one or more such duties or responsibilities;
4. The amount of time that elapsed since the criminal offense(s);
5. The age of the person at the time of the criminal offense(s);
6. The seriousness of the criminal offense(s);
7. Any information produced by the person, or on his or her behalf, regarding rehabilitation and good conduct; and
8. The legitimate interest of the employer in protecting property and the safety and welfare of specific individuals or the general public.

Effective Date

The regulation is effective July 1, 2017. It will be applied only prospectively to policies issued, renewed, or delivered in New York after that date.

However, insurers may properly audit employers and require them to maintain adequate records to demonstrate that the employer, in fact, conducted the full Article



Richard I. Greenberg

Principal
New York

212-545-4080
GreenbeR@jacksonlewis.com



David S. Greenhaus

Principal
Long Island

631-247-4658
GreenhausD@jacksonlewis.com

23-A analysis. This process therefore may begin before the effective date for policies to be issued on or after July 1, 2017.

Next Steps

Employers in New York should be familiar with their obligations to consider the Article 23-A factors prior to denying employment. The new regulation is another incentive for keeping accurate records of the analysis, as an employer may otherwise lose the benefit of commercial crime insurance coverage.

If you have questions or concerns about this or other workplace developments, please contact a Jackson Lewis attorney.

©2017 Jackson Lewis P.C. This Update is provided for informational purposes only. It is not intended as legal advice nor does it create an attorney/client relationship between Jackson Lewis and any readers or recipients. Readers should consult counsel of their own choosing to discuss how these matters relate to their individual circumstances. Reproduction in whole or in part is prohibited without the express written consent of Jackson Lewis.

This Update may be considered attorney advertising in some states. Furthermore, prior results do not guarantee a similar outcome.

Jackson Lewis P.C. represents management exclusively in workplace law and related litigation. Our attorneys are available to assist employers in their compliance efforts and to represent employers in matters before state and federal courts and administrative agencies. For more information, please contact the attorney(s) listed or the Jackson Lewis attorney with whom you regularly work.



Christopher M. Valentino

Office Managing Principal
Long Island

631-247-4653
ValentiC@jacksonlewis.com



Bradley M. Pryba

Principal
Albany

518-512-8700
Bradley.Pryba@jacksonlewis.com



Nadav Zamir

Associate
White Plains

914-872-8060
Nadav.Zamir@jacksonlewis.com

Related Articles You May Like

January 10, 2017

2017: The Year Ahead for Employers

An executive summary of recent changes in workplace law and a look ahead to 2017. [Read More](#)

January 10, 2017

Ohio Limits Local Workplace Laws, Expands Concealed Carry Rights of Licensed Gun Holders

A new Ohio law mandates uniformity of laws across the state affecting wage-hour, paid sick and safe leave and other fringe benefits, and scheduling of employee work hours. Senate Bill 331 expressly prohibits cities and counties from adopting laws in these areas that differ from those enacted at the state and federal level. Senate Bill... [Read More](#)

January 9, 2017

D.C. Council Passes Ban on Credit History Screens on Job Applicants, Interns,

Employees

The Washington D.C. Council unanimously passed the “Fair Credit in Employment Amendment Act” (Bill 21-244) to amend the Human Rights Act of 1977 and prevent employers from taking discriminatory action against applicants, interns and employees based on the individual’s “credit information.” The Fair Credit...

[Read More](#)

Related Practices

Workplace
Training

©2017 Jackson Lewis P.C. All rights reserved. Attorney Advertising. Prior results do not guarantee a similar outcome. No client-lawyer relationship has been established by the posting or viewing of information on this website.

*Honolulu, Hawai'i is through an affiliation with Jackson Lewis P.C., a Law Corporation