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North Carolina's New Law on
Inquiries About Expunged Records

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By Ken Carlson
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North Carolina employers and educational institutions that conduct criminal history inquiries have a new limitation that took effect December 1. A **newly amended statute** prohibits any inquiry that results in revealing an "expunged" arrest, charge or conviction. Although few if any employers have ever expressly asked about expunged records, the concern is now much broader – employers *must also not seek or ask about criminal histories in a manner that results in the disclosure of any expunged information*.

Expunction is a legal process by which a prior criminal history is cleared and the court file permanently sealed. Therefore, the prior arrest, charge or conviction does not count as part of an individual's criminal record.

Penalties for violating the new law include an initial warning and then up to \$500 per incident for subsequent violations.

North Carolina employers should consider revising their applications for employment, as well as their background check processes or anything else that might reasonably be interpreted as leading to the disclosure of expunged records. For example, a typical criminal history question on a job application could be revised to state something like the following:

Have you been convicted of or pled no contest to a crime other than a minor traffic offense? If so, please describe: _____ . (Please do *not* disclose any conviction or plea that has been expunged from your record.)

If you have a question about the new expunction law, or about conducting criminal background checks or using criminal record information in general, please contact any attorney in our Winston-Salem or Asheville offices, or the Constangy attorney of your choice.

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