

Jana R. Barnett, Esq.
Law Offices of Jana R. Barnett, LLC
P.O. Box 6615
Wyomissing, PA 19610-6615

Admitted to Practice in Pennsylvania
E-mail address: jrb@janarbarnettesq.com

Telephone: 610/478-1860
Facsimile: 610/478-0453

**WYOMISSING-READING-BERKS COUNTY USE OF CRIMINAL RECORDS
EMPLOYMENT ATTORNEY**

Attorney Jana R. Barnett represents clients with questions about how employers can use criminal convictions regarding their employees and applicants.

Constraints on employers' use of criminal convictions arise under laws prohibiting discrimination, the Pennsylvania Constitution, as well as under the Criminal History Record Information Act.

Applicants and employees who are denied employment or promotions, or whose employment is terminated because of criminal convictions may be able to bring discrimination claims if they can show that the disqualification has a disparate impact on a protected class to which they belong. Race and gender are two protected classes which might be involved. Employers can defeat such claims by showing that the requirement is job-related for the position, and consistent with business necessity.

Pennsylvania law limits employers' use of criminal convictions. The Pennsylvania Constitution states that, "all men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." Pennsylvanians' rights may be violated by public employers which consider their convictions unless the employers have a legitimate governmental goal for using this information, such as considering information which is reasonably related to a person's fitness to perform a particular job. Similarly, the Criminal History Record Information Act, 18 Pa.C.S. §§9101 - 9181, states that most employers may only consider applicants' convictions for felonies and misdemeanors if the convictions relate the person's suitability for a specific job. They may not consider arrests which did not lead to convictions for felonies or misdemeanors. This law also states that if an employer decides not to hire a person because of the criminal history, the employer must give the applicant written notice of this decision. The notice is required even if the employer's decision to not hire is based on multiple reasons, including the conviction. So long as the conviction is one factor in the employer's decision not to hire, notice must be given.

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Rejected applicants can sue the employer if the convictions do not relate to the person's suitability for the job in question, or if the employer failed to disclose that the conviction was a basis for the decision not to hire. The Criminal History Record Information Act entitles a person to recover actual and real damages of at least \$100 per violation, reasonable costs of litigation and attorney's fees, and exemplary and punitive damages of \$1,000 - \$10,000 if the violation of the law is willful. Under common law, they also may sue for wrongful termination or failure to hire.

If you would like to speak with Attorney Jana R. Barnett about the use of criminal convictions in employment and learn how she can assist you, call her at 610-478-1860, or click here to send her an e-mail, and she will reply as quickly as possible.

Attorney Jana R. Barnett's offices are located at 525 Kenhorst Boulevard, Reading, PA 19611 and 1238 Cleveland Avenue, Wyomissing, PA 19610-2102. Attorney Jana R. Barnett practices family law, employment law, and employment discrimination law in Reading, Wyomissing and the surrounding cities and towns, as well as in Berks County, Bucks County, Chester County, Delaware County, Lancaster County, Lehigh County, Montgomery County, Northampton County, Philadelphia County and in the United States District Court for the Eastern District of Pennsylvania and the United States District Court for the Middle District of Pennsylvania.