

Criminal Records and Getting Back into the Workforce: Six Critical Steps for Ex-offenders Trying to Get Back into the Workforce

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Employers have become increasingly concerned about knowing if an applicant has a criminal record. More employers are conducting pre-employment background checks for criminal records. Employers have been the subject of large jury verdicts for **negligent hiring** in cases where they hire a person with a criminal record that harms others, and it could have been avoided by a criminal record check. That is because employers have a legal duty to exercise **due diligence** in the hiring process, and that duty can be violated if an employer hires someone that they either knew or should have known in the exercise of reasonable care was dangerous or unfit for a job. The concern from the employer's point of view is that a person with a criminal past may have a propensity to re-offend in the future.

On the other hand, society also has a vested interest in helping people with a past criminal record obtain and maintain employment. It is difficult for an ex-offender to become a law abiding, tax-paying citizen without a job. Unless society wants to continue to spend its tax dollars on building more and more jails and prisons, ex-offenders need the opportunity to rejoin the workforce.

For an ex-offender, a job search can become a frustrating Catch-22. Nearly every employment application will ask in some fashion if a person has a criminal record. If a person lies, then they are always at risk of being terminated upon such a criminal record being discovered. If a person is honest and admits the past misconduct, there is a risk of not getting the job.

There is no perfect answer. A person with a criminal record is going to face greater challenges in getting employment. There are certain jobs where an employer will justifiably not hire an ex-offender. **However, challenging is not the same as impossible.** The key is the right attitude and getting and keeping that first job, so that as time goes by, a person has developed a successful job history that outweighs past problems.

Here are six approaches a person with a past criminal record can take:

One: Understand your rights:

A person who has a criminal record and is looking for employment must understand their rights. There are instances where an applicant can legally and ethically answer NO on a question about a past offense. This may occur in some of the following situations:

- In many states, there is no obligation to report arrests not resulting in a conviction or that are not currently pending.
- There are limitations on reporting pre-trial adjudications where the conduct by statute is not considered a criminal offense. Some states have pre-trial diversion or delayed entry of judgment).
- There may be restrictions on minor drug offenses. In California for example, an employer

may not ask about a minor marijuana offence for personal use older than two years.

- Some states have procedures to judicially "erase" a criminal offense. For example, in California, if the matter was a misdemeanor, and a person has gone back to court and received a certificate of rehabilitation under Penal Code 1203.4 that is not reportable.

Also keep in mind that most employment applications also contain language that the conviction of a crime will not automatically result in a denial of employment. Automatic disqualification could be a violation of state and federal discrimination laws. However, an employer may deny employment if the employer can establish a business-related reason for the refusal to hire.

Two: See an attorney to explore if you are eligible to get your conviction sealed, expunged, or legally minimized and to make sure you understand your rights.

This is critical. Ask an attorney if the criminal record can be expunged or set aside by going back to court, or whether it is the type of offense that an employer may legally ask about or consider. Each state has different rules, but in all states, there is a mechanism for going back to court to try to seal or expunge certain offenses. **Make sure you have explored your options.** The attorney who represented you, or the local Public Defender or Probation Office should be able to assist.

Three: Seek professional assistance.

There are also organizations that assist past offenders. Some of these organizations have relationships with employers who are willing to give an ex-offender a chance. In addition, these organizations can help a person prepare a resume and practice interview techniques that deals honestly with the past offense, but helps a job applicant put their best foot forward by explaining why they can perform the job and why the employer should hire them. Various re-entry or training programs will help ex-offenders develop new skills, or teach job search techniques.

Four: Honesty is the best policy.

In applying for a job, honesty is always the best policy. A criminal matter honestly explained during an interview may have much less negative impact than hiding it and having an employer discover it later. If an employer discovers an applicant was dishonest, the denial of a job could be based upon a lack of honesty, regardless of the nature of the offense. However, a person who has made a mistake and is now motivated to do well at a job may be of great interest to some employers.

Five: Start to rebuild your résumé one step at a time, even if it is not the "perfect" job.

All employers know that the best indicator of future job performance is past job performance. If a person with a criminal record can obtain whatever job they can, hold that job and do well, the next job becomes much easier. It is the building block approach - one block at a time.

It is critical to seek to rebuild your resume by finding any employment you can to rebuild your resume. You should first seek employment with people you know. Ask everyone that likes you if they know someone who might be willing to hire you. Yes, mention your conviction, but stress your strengths and how much you learned from your

past. Someone who knows you personally is more likely than a stranger to give you a chance.

If that does not work, then consider starting at the bottom. A few months of good work in an entry-level position can yield a good reference, which can start your career back upward.

According to career coach Marty Nemko, an entry level-job can be a launch pad and a foot in the door. Do a great job, build up relationships with higher ups, express interest in moving up and before long, you may find yourself promoted.

And if you take an entry-level job in order to rebuild your résumé, be sure it's one in which people with the power to promote you can observe the quality of your work. Avoid taking a job off-site or in a remote location. If you enjoy working for the organization ask questions and let them know you are interested in moving up.

There are certain industries that are in real need of workers. A fast food job, for example, may not be the job you want, but it is an example of a job that is widely available and allows a person to rebuild their credentials and show what they can do.

Eventually, what a new employer sees is a person with great recommendations and an excellent job history. As the criminal conviction gets older, and the job history becomes stronger, a person who has made a mistake in the past will eventually find that the criminal record is less of an issue. **It cannot be stressed enough that the best way to get a great job in the future is to get any job you can right now, and perform well.**

Six: Take the long-term view.

This is the most difficult advice to follow. An ex-offender is anxious to get back into the workforce to start making a living. They may also be anxious to have their old life back. Yet, the decks are stacked against a person with a criminal record. The jobs that are available may not be the ones that you want. You may be qualified for something a great deal better. Doors may slam in your face, and you may very well be subject to unfair assumptions. The frustration level could easily build with each disappointment encountered.

What it comes down to is that an ex-offender needs to take the long view and have the faith and patience that the criminal matter will eventually be put behind them. As frustrating as it is, the basic rule still applies—a person must rebuild their résumé over time. **And as time goes by, the criminal offense becomes less of a factor in a person's life.** But it is going to take time.

Look at it this way—even if it takes five years to rebuild your resume and get the job you want, five years will still go by. Five years later, what would you rather have—a new life with a good job or still be living in frustration because you couldn't get what you wanted right away.

Three case studies:

Case Study One: A schoolteacher was convicted of a misdemeanor offense that disqualified her from teaching. The person had dedicated their life to teaching, and suddenly it was no longer an option. She was very depressed and upset that she could no longer do what she loved and knew how to do so well. In order to qualify for a work-furlough program, she obtained a job with a friend in a retail store. It turned out that she had a talent for the new job, and became very successful and happy with it and found a new and satisfying career.

Case Study 2: A medical professional committed an offense that disqualified him from practicing his profession. He could not imagine not being employed in medicine. That had been the most important aspect of his life and defined who he was. It took a longer period of adjustment and he was very depressed and unhappy. He spent a great deal of time being upset about how unfair it was that he could not do what he could best. Out of necessity, he found job in construction. It turn out that he had a talent for this temporary job. He loved the hours and the freedom it gave him. He also realized that the pressures he had put himself under was the root cause of the criminal conduct. A few years later when he would have been eligible to attempt to regain his license, he had decided he enjoyed his new life, and did not want to go back.

Case Study 3: A young woman got involved in the wrong crowd at an early age. She was convicted of drug offenses and spent time in prison. In prison she obtained her GED. Upon release, she got a job in a fast food place. It was not the best job, but she worked hard and made herself the best worker in the place. She was always on time, cared about her job, respected her co-workers and supervisors and showed a real interest in succeeding. Since employers need that kind of worker, she was eventually promoted to the management trainee program. She then turned for assistance to a program that helped women get jobs, and was able to find a well paying administrative job in a growing firm. It took time, but she did everything right.

These case studies have one critical element in common. These individuals could not have been more depressed and frustrated at their situation. But by being patient, taking the long view and believing things could get better, eventually their lives went in new and better directions.

*** NOTE:** *This article is provided as a public service for job seekers who must overcome the burden of a past criminal matter to obtain a job. The author, who is president of an employment screening company, is unable to give job seekers individual advice on job seeking or on any legal matter.*

If you have a question about your situation, you are advised to contact a knowledgeable professional. Your local bar association can give you the names of attorneys who may help, and may in fact have a low-cost introductory visit program available. Look in your local Yellow pages under Attorneys for the phone number of the local bar association or lawyer referral program. Job placement professionals can also be of assistance. Many local government and states also offer re-entry and job training programs.
