

Expungement

TITLE(s):

EXPUNGEMENT: THE ANSWER TO AN EMPLOYMENT BACKGROUND CHECK IN THIS ERA OF HEIGHTENED SECURITY.

OR

HOW TO PROTECT YOURSELF FROM LOSING YOUR JOB IN THIS POST SEPTEMBER 11TH ERA OF INCREASED SECURITY BACKGROUND CHECKS.

There is no doubt that the September 11th tragedy has had profound effects on our every day life. Added security measures have become commonplace. Whether we endure additional security precautions in airports, at public events or at ball games, most of us view these security inconveniences as acceptable and necessary in these volatile and troubling times. However, security precautions are affecting many Americans in ways that we may not have contemplated. Since September 11th, corporate America has substantially increased the amount of security checks it performs on its employees. These security background checks are being performed not only on new employment applicants, but also on corporate America's existing employees. The huge volume of background checks have caused many ordinary people, who have for years felt comfortable and otherwise secure with their niche in the workplace, to lose their jobs. As a result of heightened workplace security, many individuals, including those who have been gainfully employed for long period of time, have lost their jobs after background checks revealed some form of criminal record.

On March 26, 2002, CBS News reported in its nightly news program "Eye on America" that since September 11th, the security industry has experienced a 20% boom. Corporate America performs as many as 70,000 background checks a day on new and existing employees. More astounding is that CBS news reported that as many as one out of seven Americans have some form of criminal background. While many of these Americans may have encountered problems with the law in their youth, or engaged in an indiscretion during their lifetime, the increase in corporate background checks has resulted in a widespread loss of employment for not only new employees, but also long term existing employees who believed that their employment with a company was secure.

How can an employee who has a criminal record, no matter how minor, avoid losing his/her job to a corporate security background check? An Expungement may be the answer. An Expungement is a legal procedure that "removes" a criminal record from the files and computer systems of the Court, police department and other law enforcement agencies.

As a partner with GAYLORD & YUSKA, a local Mercer County law firm, I have encountered a substantial increase in the amount of people inquiring about an Expungement. These people come from all walks of life and include many professional people who, due to youthful indiscretion or having made a bad decision, have a blemish on their record. Many parents have also expressed concern about how their child's brush with the law will affect that child's future career path or hinder their entrance into college, graduate school or a military academy. Untreated, a criminal record may have serious consequences on one's career and livelihood.

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An adverse background check may prohibit a job applicant from obtaining employment, hinder an employee from being promoted, or bar a business owner, or his/her employees from contracting with or servicing a government or corporate entity. In other instances, people have applied for professional licenses which include, but are not limited to, real estate, insurance or security brokerage. Having an adverse contact with the criminal justice system may cause anxiety when applying for a professional license and even bar the applicant from obtaining a license to practice within a profession. An Expungement may be the answer to all of these problems.

If the State Superior Court grants a petition for an Expungement, it is as if all matters relating to an apprehension, arrest, detention, trial or disposition never occurred. In fact, the law states that a person having received an Expungement can, on an employment application, answer “no” to the question asking whether you have been arrested or convicted of a crime.

If you have been arrested or convicted of a crime, disorderly persons, petty disorderly persons or a juvenile offense, you may be eligible for an Expungement. Not all convictions can be expunged. The nature of the offense committed, the number of convictions that you have, as well as a few lapse time periods are factors which determine whether someone is eligible. While there is usually a time limit that you must wait before filing for an Expungement, you can immediately file for an Expungement if you were arrested, but not convicted. If the charges against you were administratively dismissed after you completed a supervisory treatment program, you must wait six (6) months after the dismissal of the charge(s). Other time limits are determined by statute and depend on the seriousness of the offense.

When the Expungement petition is filed with a Court, a hearing date is usually set within 35-60 days. The total process takes three (3) to six (6) months. Due to the large volume of these petitions, I am finding the process is closer to six (6) months. Since the Expungement process is technical and rather complex, the services of an attorney are usually helpful. Once a final Order for Expungement is granted, all records shall be removed from the law enforcement agency files and “sealed”. A designated person is in charge or “control” of these records. No information will be released to an inquiring party. The inquiring party will be advised that there is no record available. The expungement laws even make it a crime for a person to “reveal to another the existence of an arrest, conviction or related legal proceeding with knowledge that the records and information pertaining to...(someone’s arrest) has been expunged or sealed.” Despite the Expungement process, there are limited situations in which one must still disclose a contact with the criminal justice system. These limited situations include application to a Judicial Branch, Law Enforcement or Correction Agency. With these limited exceptions, an applicant whose record has been expunged may respond “no” when asked, during an interview or on a job application, whether he or she has ever been arrested or convicted of a crime.

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The Expungement process provides an individual who has made a mistake an opportunity to shed the negative stigma of a conviction or criminal contact that may detrimentally affect ones livelihood and career potential. If a mistake is hindering your career opportunities, the Expungement process may provide you relief from having that mistake effect you throughout your life.