

# Certificate of Relief: Reducing Employer Exposure for Hiring Employees with Certain Criminal Convictions

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Recently, the North Carolina General Assembly enacted “An Act to Amend the Law Regarding a Certificate of Relief For Criminal Convictions.” The Act will become effective on December 1, 2018, and applies to petitions for relief filed on or after that date.

Legislators contemplated the Act would assist individuals convicted of certain crimes during their reintegration into society — particularly with regard to employment options. Essentially, when an individual obtains a certificate of relief, which is a court order, many collateral consequences associated with criminal convictions will be eliminated. In addition, the Act provides a defense for employers who may be concerned about negligent hiring/retention claims.

### Who Can Petition the Court for a Certificate of Relief?

The Act allows any individual who is convicted of not more than three Class H or I felonies, and any amount in misdemeanors, to petition a court for a certificate of relief, thereby relieving collateral consequences.

### What Must a Court Consider?

Once the petition is filed requesting a certificate of relief, the court may deny or approve it. The Act outlines the specific factors a court must review in making a decision: (1) the petition; (2) the petitioner’s criminal history; (3) any information provided by a victim or district attorney; and (4) any other relevant information. In order to grant the petition, the court must find that the petitioner established sufficient evidence of each of the following factors:

1. 12 months have passed since the petitioner completed his or her sentence;
2. The petitioner is working, or seeking to engage in lawful work or activity;
3. The petitioner has complied with all requirements of his or her sentence, including terms of probation;
4. The petitioner is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial;
5. A criminal charge is not pending against the petitioner; and
6. Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

A certificate of relief is automatically revoked when an individual is subsequently convicted of a felony or misdemeanor other than a traffic violation.

If the court denies the petition, it must state the specific reasons for denial in the subsequent court order. The petitioner can refile a petition within 12 months of receiving the denial order.

## Impact of a Certificate of Relief

Once a court issues a certificate of relief, the petitioner is relieved of some, but not all, collateral sanctions, including: a penalty, disability, or disadvantage imposed on an individual as a result of the individual's conviction of an offense that applies by operation of law, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence.

Not all collateral sanctions are relieved by a certificate of relief, however. Collateral sanctions not relieved by a certificate of relief include: (1) those listed in N.C.G.S. §15A-173.3[1]; (2) those imposed by the North Carolina Constitution or federal law; and (3) others specifically excluded in the certificate of relief. A certificate of relief does not relieve a person from imprisonment, probation, parole, post-release supervision, forfeiture, restitution, fine, assessment, or costs of prosecution.

Issuance of a certificate of relief also does not result in expunction of criminal history records, nor does it constitute a pardon. It also does not automatically bar an employer from considering relevant past criminal history or relieve a disqualification. However, an administrative agency, governmental official, or court in a civil proceeding may consider a certificate of relief in determining whether a conviction should result in disqualification.

## Employer Defense

Employers deal with challenging hiring decisions on a daily basis. For instance, many employers believe in giving second chances to individuals who have made mistakes. However, doing so can lead to claims of negligent hiring and/or retention. Regardless, the creators of the Act contemplated this delicate balance by including a legal defense for employers.

In a lawsuit or administrative proceeding alleging negligence (such as negligent hiring or retention claims), a certificate of relief will bar any action alleging lack of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise doing business with or engaging in activity with an individual whom a certificate of relief was issued. The key to this defense, however, is that the employer must show that it relied on the certificate of relief at the time of the alleged negligent act. If the employer did not know about the certificate of relief at the time of the alleged negligent act, this defense will not be helpful.

Please contact the Jackson Lewis attorney with whom you regularly work for assistance in modifying your organization's practices to comply with the new law.

[1] A certificate of relief will not relieve collateral sanctions listed under: The Sex Offender and Public Protection Registration Programs Ex offender registration requirements; The Felony Firearms Act; Motor Vehicle License suspension; Ineligibility for the North Carolina Criminal Justice Education and Training Standards Commission; and ineligibility for employment as a corrections or probation officer, and prosecutor or investigator in either the Department of Justice, or in the office of a district attorney.

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