

Legislation Governing Police Record Checks by Ontario Employers Coming Into Force

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Almost three years after the Ontario legislature unanimously passed the *Police Record Checks Reform Act, 2015* (the Act), it will come into force on November 1, 2018, making Ontario the first province in Canada to establish a comprehensive legislative regime governing police record checks.

The Act was introduced in 2015 in response to widespread concerns around the disclosure of non-criminal and non-conviction information through the existing police record check processes. Currently, when employers in Ontario conduct a police record check in relation to a prospective employee, they often receive a wide range of non-conviction information, including mental health-related police contact and detentions, complaints where charges were never laid, withdrawn charges, as well as acquittals. Civil rights and mental health organizations raised privacy concerns pertaining to the disclosure of such information, as well as the potential misuse of such information in the hiring and recruitment processes. The Act is intended to respond to these concerns and remove barriers to employment, education and volunteer activities by standardizing the procedure for police record checks and prohibiting the disclosure of non-conviction information in all but exceptional circumstances.

Specifically, the Act defines permissible disclosure for three types of police record checks:

(i) Criminal record checks

In a standard criminal record check, only criminal convictions for which a pardon has not been issued and findings of guilt under the *Youth Criminal Justice Act* can be disclosed. Disclosure is further limited as convictions for summary conviction offences are only disclosed if the request is made within five years of the date of conviction.

(ii) Criminal record and judicial matters check

In addition to the information disclosed through a criminal record check, a criminal record and judicial matters check permits disclosure of criminal convictions that resulted in an absolute or conditional discharge if the request is made within one year of the date of the absolute discharge, or within three years of the date of the conditional discharge; outstanding criminal charges and warrants to arrest; and certain court orders.

(iii) Vulnerable sector checks

Vulnerable sector checks are only permitted for jobs or volunteer positions involving positions of trust or authority over vulnerable persons, such as children, the elderly, or persons with disabilities. These checks permit disclosure of the above information plus charges where the individual was found not criminally responsible on account of mental disorder. Non-conviction information may also be disclosed through a vulnerable sector check if the criteria for “exceptional disclosure” are satisfied. Individuals can request reconsideration of the disclosure of non-conviction information after receiving the results of the check if they do not believe that the information should be disclosed.

The Act requires that a request for a police record check contain the concerned individual’s written consent to the check. The results of the check must be disclosed to the individual before being provided to the prospective employer, and can only be disclosed to the prospective employer with the individual’s written consent. An employer can only use information disclosed through the police record check for the purposes for which the check was originally requested. Moreover, every police record check provider in Ontario will be required to create a process for responding to requests to correct information in the results of a check if an individual believes there is an error or omission.

Four regulations under the Act also have been enacted to:

1. exempt certain searches from the provisions of the Act;
2. outline the criminal offences to which non-conviction information must relate in order for such information to meet the criteria for “exceptional disclosure;”
3. detail the process for requesting reconsideration of the disclosure of non-conviction information in the results of a vulnerable sector check;
4. govern the disclosure of records under the *Youth Criminal Justice Act*.

Although the Act does not come into force until later this year, employers should take this opportunity to review their existing background check policies and procedures against the new procedures that will be in

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place as of November 2018. This is the appropriate time to consider which types of police record checks are appropriate and necessary.

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