

# New North Carolina Law Decreases Protection to Employers

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Since 2011, North Carolina has provided the opportunity for an individual who has been convicted of certain crimes to petition our courts for a “certificate of relief.” A new law that goes into effect on December 1, 2018, expands the availability of these certificates of relief while imposing some additional requirements on applicants.

Notably, however, the same statute *decreases* an important protection to employers who hire individuals holding certificates of relief. This article highlights changes associated with House Bill 774, and suggests an approach that employers can take to maximize remaining protections under the modified statute.

## What is a “Certificate of Relief”?

Simply put, a certificate of relief provides relief from *some* “collateral consequences” of a conviction. It falls short of a pardon and does *not* constitute an expungement. Moreover, it does not require that an employer ignore the underlying facts of the matter.

By way of illustration, an individual may be able to use a certificate of relief to obtain an occupational license that he/she would otherwise be unable to obtain due to a conviction. Its reach is limited, however. Notably, a certificate of relief does not affect “collateral consequences” such as the revocation of a driver’s license, or sex offender registration requirements. As detailed above, the underlying conviction also still remains on the individual’s record.

## What does the new law change?

Primarily, House Bill 774 modifies the North Carolina statute governing certificates of relief (NCGS § 15A-173.2) to increase their availability. While the availability of a certificate of relief is currently limited to individuals with “no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who [have] no other convictions for a felony or misdemeanor other than a traffic violation,” the new statute will extend to individuals

convicted of any misdemeanors and up to *three* Class H or I felonies.

While the new law expands the availability of certificates or relief, it also tightens some restrictions on their use. For example, the current statute provides that a certificate of relief *may* be revoked if an individual is convicted of a subsequent felony or misdemeanor, other than a traffic violation. The new law makes this revocation *mandatory*.

Additionally, anyone who is granted a certificate of relief must notify an employer, landlord, or other relying party if: (i) he/she is subsequently convicted of another crime; or (ii) his/her certificate of relief is modified or revoked. In addition to a revocation for a subsequent conviction, a certificate of relief may be lost if a judge later determines that a material misrepresentation was made during the application process.

## How are employers affected?

In the past, North Carolina employers who knew that an employee or applicant had been issued a certificate of relief were insulated from some negligence claims associated with the hiring and/or retention of that individual. When the new statute applies, however, this protection only extends to certificates of relief upon which the employer *relied* at the time of the alleged negligence.

Based on this limitation, it is of paramount importance that employers document when they are relying on a certificate of relief when making an employment decision – whether during the application process or later in the employment relationship. Knowing that the certificate of relief existed will no longer be enough. Reliance could include, among other things, placing a note in an employee's file that the employer is aware of the issuance of a certificate of relief, and is making a specified employment decision (e.g., hiring or retention of the individual) based on its existence.

Moving forward, employers should take care to document reliance on certificates of relief when they are used as the basis for an employment decision, such as hiring or retention. For any questions employers may have about certificates of relief, please contact your employment attorney at Nexsen Pruet.

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