



Greater New York
Automobile Dealers
Association



DMV-DIRECT

REGISTRATION, TITLING, & BEYOND...
CALL 718.747.0400

GNVADA's vehicle registration and titling service, DMV-DIRECT, has been dealers go-to source for fast, convenient, & reliable DMV services.

DMV-DIRECT provides many DMV related services, including:

- Permanent Registration Issuance
- Duplicate Titles In 3 To 5 Days
- Out-of-State Registration & Title Processing for 42 States
- On-Site Connecticut Plates Issuance
- Dial-In Information Verification
- In-Transit Processing
- Duplicate Registrations
- Registration Renewals
- Title-Only Transactions
- Plate Surrenders
- Dealer Plate Renewals
- Rental Plate Renewals
- Repossessed Vehicles Processing
- MV-82 & Transmittal Forms Supplied
- Boat Registrations – Renewed and Duplicates
- Trailer Plates
- Commercial Plates

GNVADA
Greater New York
Automobile Dealers
Association

DMV DIRECT
VEHICLE REGISTRATION &
TITLE PROCESSING SERVICE

GNVADA's **DMV DIRECT**

RUSH DUPLICATE TITLE SERVICE

FAST, LOW COST SERVICE
Have a title at your dealership in 3 days, easy as 1, 2, 3!

1. Fax Paperwork to 718.747.1237
2. Receive title on 3rd day
3. Submit payment

**New Jersey
Registration &
Title Processing**

**CONNECTICUT
PLATE ISSUANCE
PROGRAM**

DMV DIRECT
VEHICLE REGISTRATION &
TITLE PROCESSING SERVICE

NEW JERSEY TRANSACTION

August & September Education and Training Classes

September 12

Phone Etiquette
for Receptionists

September 13

Service BDC Manager
and Appointment
Coordinator Training

September 14

Billers' Workshop:
Processing NYS
DMV Transactions

September 19

GNYADA Sales
Academy

September 21

Essential Skills for
New Service
Advisors



Visit www.gnyada.com/education to Register



Greater New York
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Save The Date: GNYADA Regional Meetings

October 17th – Queens

October 18th – Westchester

October 19th – Long Island



CATETCH

Catalytic Converter Etching Kits

ORDER FORM

Dealer pricing
Etching Kit Pricing*

Kits come individually packaged

- One Converter Vehicle Kit
- Two Converter Vehicle Kit
- Four Converter Vehicle Kit

*Minimum Order 50 Kits. Dealers can mix the number of labels per kit.
Pricing as of May 1, 2023

QTY	UNIT COSTS
	\$22.50
	\$24.50
	\$28.50
1	\$20.00

Dealership: _____
Contact Name: _____
Shipping Address: _____
City: _____
Credit Card Number: _____

p: 718.746.5900

ORDER YOUR CATALYTIC CONVERTER ETCHING KITS

Every new car dealer must keep catalytic converter etching kits in stock, offer a catalytic converter etching kit to any person purchasing a new vehicle, and charge no more than the dealer cost for the etching kit. Labor cost can be charged, consistent with DMV regulation.

Each Kit Includes

- 1, 2, or 4 Labels (depending on kit size)
- 2 Window Warning Stickers
- Etching Fluid
- Installation Instructions
- Glove Box Contact Card
- Registration Instructions

Etching Kit Pricing*

Kits come individually packaged

- One Converter Kit - \$22.50
- Two Converter Kit - \$24.50
- Four Converter Kit - \$28.50

Minimum Order 50 Kits
Each Kit is to be used on one vehicle
**Pricing as of May 1, 2023*

To place your order contact **Kelsey Hering** at **718.746.5900** or **Kelsey@gnyada.com**.

Dealer pricing

Etching Kit Pricing*

Kits come individually packaged

- One Converter Vehicle Kit \$22.50
- Two Converter Vehicle Kit \$24.50
- Four Converter Vehicle Kit \$28.50

Minimum Order 50 Kits. Dealers can mix the number of labels per kit.

***Pricing as of May 1, 2023**

For more information or to purchase your CATETCH kits, contact the Association at 718.746.5900.

GNYADA Webinar

August 24, 2023

James E. McGrath, III, Esq.

Agenda

- Background Checks
 - FCRA Compliance and Requirements
 - Arrest/Conviction History Consideration in Employment Decisions
- Artificial Intelligence
- I-9 Updates

Background Checks



Should dealers use background checks for employees? Candidates?

- Business decision
- Should be focused on:
 - *What* will the Dealership learn from conducting background checks and *why* is that important?
 - *What is the legitimate business interest in doing a background check? What is the concern?*
 - **Note:** This must be something more than speculation and conclusion that “we don’t want to hire someone with a criminal conviction” (because that alone is unlawful under the NYHRL and NYCHRL)

When Should Dealers Use Background Checks

- Pre-hire/conditional offer of employment
 - More on this in a bit regarding obligations and considerations with what employer can and cannot do with information from background check
- If someone is transferring into a new role
 - If the new role/position has access to sensitive information, financials, etc.
- Must be applied equally and consistently to all similar employees
 - Cannot just pick and choose who will be subject to background check case by case
- Key → Decision to require background should be centered around the legitimate business reason for needing that information to make a decision on hiring
 - Decision to run background check should not be arbitrary or an “I gotcha”

Background Checks

- Checks conducted by the employer vs. outsourcing to a third-party vendor
- Fair Credit Reporting Act (“FCRA”) application
 - Use of a third party “consumer reporting agency” (CRA)
- The FCRA regulates
 - “Consumer reports”
 - Report provided by CRA regarding credit standing, character, general reputation, personal characteristics
 - “Investigative consumer reports”
 - Information obtained through personal interviews

What Laws Apply to Background Checks?

- Federal FCRA
- NYS FCRA (Gen. Bus. Law § 380, et. seq.)
- NYC Fair Chance Act
- NYC Stop Credit Discrimination in Employment Act

Risk of Violations

Federal FCRA:

- Plaintiffs' lawyers see potentially lucrative claims
 - Statutory damages up to \$1,000 per applicant
 - Attorneys' fees
 - Potential punitive damages
- Hyper-technical challenges
- All industries
- Highly-publicized significant class action settlements and federal court victories

Risk of Violations

NYS Fair Credit Reporting Act

- Actual damages
- Punitive damages (if willful)
- Costs and reasonable attorney's fees

NYC Fair Chance Act

- Civil penalties up to \$125,000, \$250,000 if willful
- Compensatory damages
- Punitive damages
- Attorney's fees

Complying with the FCRA

- **Before** requesting a report:
 - Disclosure
 - A written statement that a report may be obtained for employment purposes
 - Employer might use information in consumer report for decisions related to employment
 - **Clear and conspicuous**
 - **Must be written and stand-alone format**
 - Written authorization from employee to obtain consumer report(s) throughout employment
 - Certification – What are you certifying to?
 - Notified applicant or employee and got permission to obtain consumer report
 - Complied with all of the FCRA requirements
 - Will not discriminate against applicant or employee or otherwise misuse information as provided by federal, state, or local EEO laws and regulations

Investigative Reports – Nuances

- Investigative Report → Reports based on personal interviews concerning a person's character, general reputation, personal characteristics, lifestyle
- Investigative reports have additional requirements:
 - Notice of right to request the nature and scope of the investigation
 - Employer must provide “Summary of Your Rights Under the Fair Credit Reporting Act”
 - Disclosures within 3 days of request for report
 - Employer certification to CRA (Credit Reporting Agency)

What happens when you receive the Report?

Once an employer receives a report, can the employer rely on it to reject the applicant without any further steps?

No.

Prior to Taking Adverse Action

- **Adverse actions:** Examples including failing to hire, termination, taking other action against candidate or employee because of the information in the report
- **Before** taking any adverse action based (in whole or in part) on a consumer report, dealers must:
 - Provide employee or applicant notice which includes copy of the report upon which employer relied to make decision
 - Provide a copy of “Summary of Your Rights Under the Fair Credit Reporting Act” Notice
 - Allow a “reasonable period of time” to challenge or reply to the report
 - Not a bright line rule, will depend on the circumstances but generally at least 5 business days

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After Adverse Action

- Employer must:
 - Notify employee or candidate that the information from the report was the basis for the decision which includes:
 - Name, address, and phone number of the CRA
 - Statement on CRA's limited role (CRA did not make the hiring decision/can't give specific reasons for it)
 - Notice of individual's right to:
 - Free copy of the consumer report (within 60 days)
 - Dispute the accuracy/completeness of any information on the report with the CRA

Caution – Don't Rely On CRAs

- If you use a third-party vendor to conduct criminal background checks, do not rely on them to comply with FCRA notice/disclosure requirements!



Disposing of Consumer Report

- FCRA requires securely disposing of report and any information gathered from it which can be done by:
 - Burning it, pulverizing it, shredding it
 - Disposing of electronic information so it cannot be read or reconstructed

NYC Stop Credit Discrimination in Employment Act

- The NYC Stop Credit Discrimination in Employment Act (“SCDEA”) prohibits employers from requesting or using a consumer credit history of a job applicant or current employee, subject to specific exemptions
- If Dealership typically conducts a consumer credit history as part of the hiring process, it will need to significantly change that practice for any NYC employees
- Violations → Up to \$125,000 civil penalties, up to \$250,000 for willful, wanton or malicious conduct, front pay/back pay, compensatory damages, punitive damages

NYC Fair Chance Act

- Applies to employers with four or more employees in NYC
 - Not all need to work at same location, as long as one works in NYC
- Applies to applicants and current employees
- **Exemptions:** *Limited* exemptions are provided under the law, including actions required by federal, state or local laws; employers required by self-regulatory organization to conduct criminal background check of regulated persons (only for those regulated positions); police and peace officers and law enforcement; and certain City government positions

NYC Fair Chance Act Prohibitions

- Employers **cannot**:
 - Ask about applicants' about criminal history, open criminal cases, until after a conditional offer of employment is extended.
 - Cannot ask applicant to authorize background check or attempt to discover whether applicant has arrest or conviction history before conditional offer.
 - Make any reference to arrest or conviction history, or background checks, when advertising for the position, including phrases like “no felonies,” or “background check required,” or “must have clean record,” on job ads.
 - Take adverse action against an employee (or independent contractor) with a pending arrest or conviction until the employer reviews, analyzes, and determines that there is a “direct relationship” between the alleged conviction (underlying conduct) and the job, or that continuing to employ that person in that capacity would “involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.”

NYC Fair Chance Act - When can we ask about criminal history?

- Dealership *may* ask about applicant's criminal conviction history or pending criminal case, conduct a background check, and ask questions regarding underlying circumstances of the criminal history
 - After conditional offer of employment is extended **and**
 - After Dealership has considered and exhausted all other non-criminal information (e.g., work experience, educational qualifications, licensure, interviews, etc.)

***Note** that under the NYS Human Rights Law, employers are prohibited from inquiring about prior arrests.

After Conditional of Offer is Made

- Dealership can:
 - Ask applicant if they have a criminal conviction or pending criminal case
 - Check criminal history
 - Check underlying circumstances of criminal history
- *Note:** There are certain criminal histories that are completely protected as deemed “non-convictions” (Very long list available [here](#).)

Considering Withdrawing Offer?

- If Dealership considers withdrawing an offer of employment based on the information reviewed as part of the criminal record, the employer must:
 1. Evaluate the applicant under the “Relevant Fair Chance Factors” (which includes Article 23-A of the Corrections Law factors that apply under state law as well) and share the written evaluation of such factors with the applicant;
 2. Give the applicant a copy of any background check or other documents used to determine that they have a criminal record; **and**
 3. Hold the job open for at least 5 business days so that the applicant has an opportunity to respond. There is a particular form recommended by the City for this purpose which can be found [here](#).
- If applicant provides new information, must be considered and process must be repeated

Employers Must Then

- Provide applicant with exact information used to make determination
 - Date/time accessed
 - If you hired another company to do a background check report, turn over a copy of that report.
 - If you searched the Internet, print out the pages you relied upon.
 - If you checked public records, provide copies of those records.
 - If you relied on oral information, summarize your conversation and the information obtained in writing. This includes information provided by the applicant.

NYC Fair Chance Act – Factors To Evaluate

- a) New York public policy to encourage the employment of people with criminal records;
- b) The specific duties and responsibilities of the prospective job;
- c) The bearing, if any, of the person's alleged or convicted crime on their fitness or ability to perform one or more of the job's duties or responsibilities;
- d) For convictions, the time that has elapsed since the occurrence of the events that led to the applicant's criminal conviction, not the arrest or conviction itself (not applicable if the consideration involves a pending criminal accusation);
- e) The age of the applicant when the events that led to their alleged or convicted crime occurred (If they were 25 or younger, you should treat that as a mitigating factor.);
- f) The seriousness of the applicant's conduct leading to the charge or conviction (Note that the Commission does not consider convictions or charges for possession or sale of a controlled substance to be particularly serious);
- g) Any information produced by the applicant, or produced on the applicant's behalf, regarding their rehabilitation or good conduct;
- h) The legitimate interest of the employer in protecting property and the safety and welfare of specific individuals or the general public;
- i) If an applicant has a certificate of relief from disabilities or a certificate of good conduct, the employer must presume they are rehabilitated. The absence of such a certificate is not evidence of a lack of rehabilitation or good conduct.

NYC Fair Chance Act – State Law Factors To Evaluate

*Note that under the New York Human Rights Law in tandem with Article 23-A of the Corrections Law, employers who are considering criminal history as disqualifying to employment or the basis for some other adverse employment action, the State law requires evaluation of eight factors (which are largely identical to those above). Notwithstanding, if the Company conducts background checks and considers criminal histories in the hiring process, the Company must ensure that it is complying with both the state and local law in this regard.

Recent Example - NYC Fair Chance Act Violation

The Chefs' Warehouse – October 2022

Key Takeaways:

- Commission-Initiated action
- Violation: Employer posted and maintained employment advertisements and applications stating applicants subject to criminal background checks
- Result: Conciliation agreement
- Penalty: \$120,000 in Civil Penalties, training employees on the NYCHRL, revising policies consistent with the NYCHRL, creating a Fair Chance Act Policy, and displaying the Commission's Notices.

[Source: https://www.nyc.gov/site/cchr/enforcement/2022-settlements.page](https://www.nyc.gov/site/cchr/enforcement/2022-settlements.page)

Keep in Mind...

- Record keeping – How long do you have to hold on to certain records by law?
 - What is your organization's record retention policy?
 - Recommended at least 6 years for most employment records
- Disposal
 - Ensure you are complying with applicable law and internal policy on proper disposal of records

Conviction or Arrest Inquiries



Hiring – What can('t) you ask?

- **Ban-the-Box Laws** generally, prohibit employers from inquiring about applicant's criminal or arrest history on a job application or in early hiring process (first interview(s))
- Currently: No NYS-Wide “Ban the Box” Law
 - Municipal/local level including: Buffalo, Rochester, Syracuse, ordinances
 - Westchester County, Albany County, Suffolk County,
 - NYC Fair Chance Act (amends NYCHRL)
 - Keep in mind NYSHRL limitations, however

The Risk...

- New York Attorney General has investigated and imposed fines against employers who are found to violate Ban-the-Box laws across the State
 - Aldo (2018) – NYC: \$120,000 fine, required to modify employment applications, create new policies to ensure applicants' criminal histories are assessed at appropriate point in hiring process, and report remediation to NYAG
 - Marshalls (2017) – Buffalo: \$95,000 fine, etc.
 - Big Lots (2017) – Buffalo: \$100,000 fine, etc.

Practice Tip

- Employers with a presence in multiple states or geographic areas within New York
 - Consider getting rid of all criminal conviction questions on job applications, *or*
 - At a minimum, should check and monitor status of an applicable “ban-the-box” type of law in each city, county, or state in which they operate
 - Caution: This may result in implementing different hiring processes and application materials for locations with different laws
- Train your interviewers!

EEOC's Take

- A criminal record is not a protected characteristic under Title VII
- BUT, criminal background checks could result in disparate impact or disparate treatment
- EEOC Guidance
 - Recommends no inquiries about convictions on the application or early in the hiring process
 - Limitation on inquiries -- job-related and consistent with business necessity
 - Make sure treating **everyone** equally!

New York Human Rights Law

- **Arrests***
 - **Cannot make any inquiry** about arrest, *or*
 - **Take adverse action** based on any arrest or criminal accusation **not then pending** against individual which was resolved in favor of individual

*Currently pending arrests are not protected, *but proceed with caution!*

Arrests (While Employed)

- Arrest happens while employed, employee is not terminated, and then the arrest is subsequently resolved in favor of employee → **employee becomes protected**
 - Cannot initiate adverse action based on arrest
 - Prohibited from questioning the employee about the matter
 - However, employer can require proof of favorable disposition

Special Rules/Protections

- Other specific circumstances protected:
 - Dismissed pursuant to CPL 160.50 (dismissal/acquittal that is then sealed)
 - Disposed of as a youthful offender adjudication
 - Resulted in conviction for violation which was sealed
 - Resulted in a conviction which was conditionally sealed
 - Sealed Records: If record is not sealed, conviction record can be required to be disclosed, subject to certain exceptions

New York Human Rights Law

- **Previous Convictions**

- Cannot deny employment based on conviction when such denial is in violation of NY Corrections Law Article 23-A
- Unlawful to deny employment because of a **criminal conviction**, unless:
 - There is a direct relationship between the criminal offense and the employment;
 - or
 - Granting employment would create an unreasonable risk to property or safety of others

Previous Criminal Convictions

- **Note:** Conviction that occurs during employment does not entitle employee to protections under the NYHRL/Article 23-A Corrections Law
- **Note:** Employers are not prohibited by the state law from asking about prior convictions (unless sealed)
- **Note:** Misrepresentations made by applicants/employees may be grounds for denial of employment/termination

NYS Law - Article 23-A of the Corrections Law

- Applies to private employers with 10+ employees
- Factors to be considered:
 1. Public policy
 2. Specific job duties and responsibilities
 3. Bearing on applicant's fitness to perform duties
 4. Seriousness of conviction history
 5. Time elapsed
 6. Age at time of offense
 7. Evidence of rehabilitation
 8. Interest of employer in protecting property, and safety and welfare of individuals and the general public
- *Presumption of rehabilitation if candidate has certificate of relief from disabilities or certificate of good conduct
- **Must** consider **all** factors
 - ***Be ready to prove this!***

Best Practices Tip

- Make Decisions on Case-by-Case Basis
 - Carefully conduct the analysis (rationally)
 - Document it/support it *before* decision is made
 - This should be in writing, ideally working through and documenting each factor
 - Have you hired/not hired others for similar crimes/with convictions?
 - How is this situation the same/different?
 - Consult with legal counsel


Best Practices Tip - Complying with New York Law

- New York employers must
 - Post a copy of Article 23-A of the N.Y. Corrections Law
 - Provide a copy of Article 23-A to a candidate if a background check report contains criminal conviction information
 - **Note:** Give it to the candidate before conducting the check!
 - Upon request of applicant, if previous conviction of criminal offense(s) was(were) reason for denial of employment, employer must provide written statement setting forth reasons for the denial with 30 days of a request.

Key Takeaways NYC Employers

- Do not advertise or discuss background checks until after conditional offer is made and all other information is considered
- Next, comply with disclosure and authorization requirements under FCRA, State FCRA, NYC Fair Chance Act
- If dissuaded from pursuing candidate further due to information in background check/consumer report, follow all applicable processes under FCRA, State FCRA and NYC Fair Chance Act before effectuating decision

Updates to I-9 Compliance



Employment Eligibility Verification
Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No. 1815-0047
Expires 08/31/2019

▶ **START HERE:** Read instructions carefully before completing this form. The instructions must be available, either in print or electronically, during completion of this form. Employers are liable for errors in the completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work-authorized individuals. For more information, see the instructions. An employer may not require an individual to present more than one document(s) an employee may present to establish employment authorization and identity. If an individual because the documentation presented has a future expiration date may also be required to present additional documentation.

Section 1. Employee Information and Attestation (Employees must complete this section no later than the first day of employment, but not before accepting a job offer.)

Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)			
Date of Birth (mm/dd/yyyy)	U.S. Citizen		

I am aware that I am responsible for providing the information requested on this form and for the accuracy of the information provided.

I am aware that I am responsible for providing the information requested on this form and for the accuracy of the information provided.

Signature _____ Today's Date (mm/dd/yyyy) _____

Last Name (Family Name)		First Name (Given Name)	
Address (Street Number and Name)		City or Town	State ZIP Code

Form I-9 07/17/17 N Page 1 of 3

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Updates to I-9 Form

- New I-9 form available – MUST use by Nov. 1, 2023:
<https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf>
- Changes include:
 - Sections 1 and 2 are on one page
 - Fillable form to be used on tablets and mobile devices
 - Preparer/translator certification and reverification and rehire sections of form are now supplements to the form to be used when necessary
 - Revised Lists of Acceptable Documents page to include acceptable receipts and guidance on automatic extensions of work authorization
 - Instructions are only 8 pages instead of 15
 - Includes checkbox allowing employers to indicate they examined Form I-9 documentation remotely under a DHS-authorized alternative procedure

Covid Flexibilities are Over, 30 Days to Complete Physical Inspection of Documents

- As of August 1, 2023 - employers must return to physical (in person) inspection of I-9 documents for new hires and re-verification
- By August 30, 2023 - employers must perform physical (in person) inspections of I-9 documents of all employees hired between March 20, 2020 and July 31, 2023 whose documents were inspected remotely
 - Form I-9 must be updated to note the completion of the physical inspection of documents
 - For employees continuing to work remotely, may be done by authorized representative of the employer
 - For employees hired within this timeframe who have since separated from the employer - explain in “Additional Information” box on Form I-9 and include date of employee’s separation

DHS Provides Alternative Procedure for Completing Form I-9: E-Verify

- Effective August 1, 2023
- Remote examination of identity and work authorization documents is only available for “qualified, E-Verify employers”:
 - In good standing with E-Verify:
 - (1) has enrolled in E-Verify with respect to all hiring sites in the United States for which it intends to use the Alternative Procedure;
 - (2) is in compliance with all requirements of the E-Verify program, including but not limited to verifying the employment eligibility of newly hired employees in the United States; and
 - (3) continues to be enrolled and a participant in good standing in E-Verify at any time during which the employer uses the Alternative Procedure

DHS Provides Alternative Procedure for Completing Form I-9: E-Verify

- If employer was enrolled in E-Verify and performed remote inspection of employee's Form I-9 documents using the Covid-era flexibilities:
 - Can use Alternative Procedure to satisfy the physical inspection of documents that must occur by August 30, 2023

What is the E-Verify Alternative Procedure?

- Within 3 business days of an employee's first day of employment, E-Verify employer must:
 - Examine copies (front and back) of Form I-9 documents provided by employee to ensure that they reasonably appear to be genuine
 - Conduct a live video interaction with employee to be sure that the documents are related to the individual
 - Employee presents actual documents
 - Complete on new Form I-9 where indicated that the Alternative Procedure was used to examine documents and complete Section 2 or reverification supplement
 - Retain clear copy of documents (front and back)
 - Create E-Verify case for new hire

Odds and Ends – E-Verify Alternative Procedure

- Alternative Procedure is optional, not required
- If offered to new employees at hiring site, must do so consistently for all employees at that site
- Employers can choose to use Alternative Procedure for remote employees only and continue to use physical inspection for onsite or hybrid employees
- Must allow employees who are unable or unwilling to submit documents using the Alternative Procedure to submit documents for physical inspection

Questions?

More Information on Pay Transparency, Equity, and Other Workplace Issues



Bond's Weekly Webinar:

<https://www.bsk.com/news-events-videos/update-and-discussion-on-legal-and-practical-issues>

Thank You

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It is not to be considered as legal advice.
Laws can change often, and information may become outdated.

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