



STATE OF MAINE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Maine Background Check Center

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### Waiver Request

A comprehensive background check completed at your request has resulted in the identification of a conviction that prohibits you from hiring, employing, or retaining that person as a Direct Access Worker, or a criminal charge identified in a prior check has resulted in a conviction upon final disposition. A copy of the results of the background check results provided to the Maine Background Check Center (MBCC) has been forwarded separately. If the applicant/employee believes there is an error in the conviction information provided, they may contact the Maine State Bureau of Identification at 207-624-7240.

Pursuant to the Maine Criminal Background Check Center Act, 22 M.R.S., Chapter 1691, no individual with a disqualifying criminal conviction can legally be hired, employed, or retained as a Direct Access Worker during the period of disqualification for that conviction. However, as an employer, you have the right to request a waiver from that prohibition against employment. A waiver may be requested depending on certain circumstances that you as the employer must consider, including: 1) the nature and gravity of the disqualifying offense, 2) the time that has passed since the disqualifying offense, 3) the nature of the employment held or sought, and 4) whether the criminal conduct was employment related.

A waiver process can be initiated, if your applicant or employee chooses to do so. If the applicant or employee completes Section 1 of the Waiver Request Form, and you feel that you have reached a reasonable conclusion that the individual does not pose a threat of harm to a protected individual, or others involved in the care and support of the individual, you may sponsor a waiver request.

You must send the completed waiver request to the address below within thirty (30) days of the date of the disqualification letter. Waiver requests received after 30 days of the disqualification notice shall not be considered.

Waivers may not be considered or granted for disqualifications due to listing on any State or Federal registry of sexual offenses; substantiated allegations of abuse, neglect, or misappropriation of funds; or other actions resulting in a listing on the registries and lists described in 10-144 Chapter 60, Rule Relating to the Maine Background Check Center.

## FREQUENTLY ASKED QUESTIONS

### **Q. WHAT IS A WAIVER?**

- A. 22 M.R.S. Chapter 1691 states that employers must have a criminal history and background search completed on any individual who will have direct access to people in care prior to extending an offer of employment to, contracting with, or allowing the person to volunteer in such a role. Employers cannot hire an individual with certain types of criminal convictions. However, in certain circumstances, the individual has the opportunity to initiate a waiver that, if granted, would allow them to be hired.

In the event that no other federal or state law mandates an employment prohibition by an employer subject to 22 M.R.S. Ch 1691, an individual who is banned from employment because of a disqualifying offense may initiate a waiver request under the following circumstances:

1. The individual is seeking to be employed or is currently employed by an employer subject to 22 M.R.S. Ch 1691; and
2. The employer has chosen to sponsor the individual's request for the removal of the ban in order to create or maintain an employment relationship.

### **Q. WHAT MUST BE SUBMITTED WHEN REQUESTING A WAIVER?**

- A. You must submit a completed Waiver Request Form and any other information you think is important for the Maine Background Check Center (MBCC) to consider for review, such as:

- Recommendation letters from current or potential past employers, training agencies or schools; or
- Character references from persons who know the individual's character and work history.

### **Q. HOW WILL I BE INFORMED OF THE RESULT OF MY WAIVER?**

- A. Completed requests for waivers will be reviewed by the MBCC. The MBCC will issue a decision not later than 10 business days after receiving the completed request. (This time period does not apply to any request for a waiver in which the applicant/employee challenges the accuracy of the information obtained from the criminal history and background search.) Employers will be notified by mail regarding the decision.

### **Q. WHERE DO I SEND THE WAIVER REQUEST FORM?**

- A. You may mail completed waiver request forms and supporting documents to:

Maine Background Check Center  
Division of Licensing and Certification  
State House Station 11  
Augusta, ME 04333

You may also either fax the documents to 207-287-5807 or email them to: [MBCC-Admin.DHHS@Maine.gov](mailto:MBCC-Admin.DHHS@Maine.gov).

### **Q. WHAT HAPPENS IF THE WAIVER REQUEST IS DENIED?**

- A. Either you or the applicant/employee may appeal the decision in accordance with Section 5(E)(1) of the MBCC rules.

## WAIVER REQUEST FORM

Applicant/Employee Name: \_\_\_\_\_

DOB: \_\_\_\_\_

Position sought: \_\_\_\_\_

Convictions(s) and date(s) resulting in disqualification: \_\_\_\_\_

**I. To be completed by the applicant or grandfathered employee: add additional page if room is needed.**

I, \_\_\_\_\_ (applicant), believe that \_\_\_\_\_ (employer) should sponsor a waiver request with the Department of Health and Human Services, based on my responses to the questions below.

*How old were you when the crime was committed? How do you think your age at that time might be relevant?*

*How long ago were you convicted of the disqualifying offense? Have you been convicted of any other crimes since that conviction?*

*How serious was your crime, in your opinion? Were others harmed, or could harm have resulted from your actions?*

*Is there anything you would like to say about the events leading up to this conviction that would influence our willingness to sponsor a waiver request?*

*What have you done since this conviction that would prevent further arrests? Have you participated in any related rehabilitation or training programs?*

*Is the crime for which you were convicted relevant to the position for which you have applied? Why or why not?*

*Have you been working in this position or a similar position since you were convicted? For how long?*

*Are you now or, since your conviction, have you been bonded under state or federal law? In what capacity?*

*Do you have any prior employers who could make recommendations for your hire on your behalf? If so, please provide their written references or recommendations.*

**II. To be completed by the employer requesting the waiver:**

The above individual is  seeking to be employed or  is currently employed by \_\_\_\_\_ subject to the approval of this waiver.

I have chosen to sponsor this individual's request for the removal of the ban in order to create or maintain an employment relationship.

I attest to the Department that the decision to sponsor the waiver request occurred after considering and verifying the objective information provided to me in Section I of this application and the following factors:

- (1) The nature and gravity of the disqualifying offense or offenses;
- (2) The time that has passed since the disqualifying offense or offenses;
- (3) The nature of the employment held or sought;
- (4) Whether the criminal conduct was employment-related; and

I have concluded that this individual does not pose a threat of harm to a protected individual or others in the care and support of the individual.

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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**III. For Departmental use only:**

The following factors support this waiver request:

- The unique facts and circumstances of the conviction indicate minimal risk of further convictions
- Sufficient time has passed without recurring convictions
- The presence of extenuating circumstances in the conviction
- The individual has provided demonstration of rehabilitation
- The conviction is not relevant to the current or prospective employment

The Waiver is granted. The employer has reasonably determined that the health and safety of a protected individual is not in jeopardy and a denial of a waiver request is not otherwise warranted in accordance with federal or state law.

The Waiver is denied. The employer has not reasonably determined that the health and safety of a protected individual is not in jeopardy and the approval of a waiver request is not otherwise warranted in accordance with federal or state law.

\_\_\_\_\_  
MBCC Manager

\_\_\_\_\_  
Date