

Looking Out For Your Legal Rights®

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WAGE RIGHTS FOR WORKERS Minimum Wage Increase and Your Right to Overtime Pay

ON JANUARY 1, 2018, New Jersey's minimum wage increased to \$8.60 an hour—up from \$8.44 in 2017 and \$8.38 in 2016. The increase in the state's minimum wage is connected to the consumer price index, which is used to set the minimum wage each year.

Generally, workers should receive at least this minimum of \$8.60 per hour for all hours worked, even if they work on a weekly salary, a day rate, a task rate, or piece rate. For example, if you are paid on a weekly salary rate, and your work hours for a weekly pay period are 65 hours, the weekly salary rate must be equal to (or more than) the minimum wage (65 hours x \$8.60 = \$559).

Overtime Pay

For work hours beyond 40 in a week, workers are entitled to overtime pay or "time and a half," unless they are exempt from overtime—even if they are paid a weekly salary. Such exemptions can include executives, professionals, or outside salespeople. Exemptions from overtime should only be applied in a narrow manner, giving workers the best opportunity for fair wages. For example, if you do some

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management or outside sales work but have substantial other duties, the exemptions may not apply to you.

The failure to pay salaried workers overtime when it is required is a common wage violation. For example, if you are paid a salary of \$700 per week and you work 55 hours in the week—unless you are exempt—you are owed additional wages. First, you calculate your hourly wage by dividing your hours for the week into the total wage. (\$700 divided by 55 hours = \$12.73 per hour). Then you calculate your overtime hours (55-40 = 15 overtime hours). You then calculate the “half time” of the hourly rate (in this example \$12.73 divided by 2, which equals \$6.37 per hour). You then multiply the number of overtime hours (15) by the half-time rate of \$6.37 to get a total of \$95.55 in unpaid wages for the one week. In wage claims, you can go

back two to three years on minimum wage and overtime claims, so the amounts can add up over time. Under federal law, there is also a provision for extra damages equal to the unpaid wages for both minimum and overtime claims.

Even if there is not a definite record of the hours worked, workers can provide a reasonable estimate of the hours worked and payment can be based on that. Since it is the employer’s duty to track hours, workers should not be penalized due to the lack of records.

Employers may also try to limit workers’ access to minimum wage, overtime, unemployment, and workers compensation rights by misclassifying workers as independent contractors. Even if a worker has signed an agreement that states that the worker is an independent contractor, such agreements will not prevent you from challenging



Looking Out For Your Legal Rights®

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This newsletter is for general information only. If you have a legal problem, you should see a lawyer.

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the classification. The law in New Jersey generally presumes that workers are employees. If you do not have your own business or are supervised by the company that pays you, you can be consid-

ered an employee, eligible for minimum wage, overtime, unemployment, and workers compensation. □

*By Keith Talbot, Senior Counsel,
Legal Services of New Jersey*

UNEMPLOYMENT BENEFITS: Know Your Rights When You Leave Your Job

UNEMPLOYMENT benefits offer some protection to workers when employment ends and should be fairly given, but they are not guaranteed for workers who leave their job. Employers have a financial interest in disputing (disagreeing with) your claim. The New Jersey Department of Labor examines each claim closely and may deny a claim even if the employer does not challenge it.

Good Cause Reasons for Leaving Your Job

You should carefully consider your right to unemployment benefits before you leave your job. If you are having severe health issues that prevent your return to work, keep in contact with your employer. If you simply stop communicating with your employer, you will be found to have abandoned your job, which would be considered a “voluntary quit.” This would completely disqualify you from receiving benefits. Get medical notes from your medical provider to show your health issues and ask for a leave

of absence if you cannot perform the job.

If you are considering leaving for good cause related to the work, your reasons must be very strong to get benefits. Unlawful working conditions, such as sexual or religious harassment, wage violations, disability discrimination, or safety or health violations are possible examples of good cause. Simply stating that a supervisor was pushing very hard or was unkind in their supervision is difficult to prove. Before you leave your job, you should complain, preferably in writing, to your supervisor and human resources to show that you tried to resolve the issue before resigning.

If you submit a letter of resignation, put your reasons for resigning in your letter. The employer and the unemploy-

ment agency may attempt to use a letter without complaints against you. But courts have allowed benefits to workers who chose not to list reasons in their resignation letter because they didn’t want to “burn bridges” with an employer.



Unemployment benefits offer some protection to workers when employment ends, but they are not guaranteed for workers who leave their job.



You should carefully consider your right to unemployment benefits before you leave your job.

If your employer has substantially reduced your work hours or wages, or changed working conditions, there is a standard called “new work” that could apply. This reason for leaving your job has a four-week penalty instead of the total denial of benefits that a voluntary quit will cause.

Eligibility for unemployment benefits requires that you be able to work, but you do not have to be able to do your prior work. For example, if your prior job required extensive walking, but you can only do seated work, you may be eligible for benefits. Some people may be eligible for temporary disability benefits or unemployment at the same time, although you can receive benefits from only one program at a time. Eligibility for temporary disability requires an inability to do your prior job. However, if you can do other work that is less strenuous and you are actively searching for such work, you may be eligible for unemployment as well, and you could apply to either program. Combining weeks of temporary disability with unemployment benefits may increase the number of weeks of benefits that you can receive assistance. You can also apply for family

leave benefits to assist with the birth of a child or care for a family member.

Misconduct Issues

Getting terminated from your job will often raise issues of misconduct when you apply for benefits. If you disagree with the reasons for termination, you should make appropriate complaints to your supervisor, human resources, or a union—in writing, if possible. Even if you do not want to return to the job, filing a complaint can help your unemployment claim, since the agency will ask if you did this.

If the employer offers or suggests resignation instead of termination, you need to be very careful. If you resign when it is clear that you would be terminated in the next 60 days, you may be eligible for benefits. However, if there is a question about whether you would be terminated, you will be completely denied benefits on the basis of voluntary quit. If you choose to resign, your resignation letter should state that you are resigning instead of prompt termination.

Misconduct sanctions increase by severity. “Simple misconduct,” which requires a showing of *intentional* action and *substantial* disregard of the employer’s rules, will result in an eight-week delay in benefits. “Severe misconduct,” which requires either repeat violations after a warning or more severe problems, is a complete disqualification from benefits. The employer has the burden of proving misconduct, but you should prepare your testimony carefully to show that you did not intentionally violate any rules. If the employer

You must file a claim in order to be eligible for unemployment benefits.

The quickest way to file for your benefits is online.

has put you on suspension and is investigating, you may be eligible for benefits. The test for eligibility is whether the employer is providing work—not whether a final determination has been made on termination. If the suspension appears that it will be lengthy, you may want to proceed with filing for unemployment.

Filing the Claim and Providing Interview Information to the Agency

You must file a claim in order to be eligible for unemployment benefits. You will not get back benefits to your date of termination—benefits begin only after your application date. The quickest way to file for your benefits is online.

After you file a claim, if there is any indication that a disqualification may apply to your case due to voluntary quit or misconduct, the agency will schedule an interview with a deputy. You should be notified of the reason for the interview. Often, the employer has completed an initial form that may indicate why the employer believes you should be disqualified. This may include that you were discharged for rule violations or that you abandoned the job.

The deputy interview is very important for your case. Often, the agency will have negative information from the employer. You have the right to have an attorney for the deputy interview and should seek advice from an attorney, if possible, so that you fully understand the issues involved in your case. If English is your second language, you may

want to ask for an interpreter even if you can speak a fair amount of English. You want to make sure that you fully understand these important proceedings. If you require additional time to prepare for the interview, you may request a postponement by providing advance notice. If you are denied benefits, you will need to immediately appeal, but the process will take four to six weeks.

At the beginning of the interview, you may request copies of any documents that the employer has provided and ask that the significant points be read to you before starting. The agency will then take your testimony under oath. The best way to present your case is usually through your testimony and your documents. You may request that statements be taken from your witnesses who have firsthand knowledge of the case. You or your representative will have the opportunity to question your own witness, present documents, provide questions to ask the employer, and provide a closing statement or summary.

Most often, the agency will interview you separately from your employer. If the employer responds, the deputy will set up a rebuttal call with you where you can respond to the employer's statements. In some cases, the deputy will have the claimant and the employer on the line at the same time.

LSNJLAWSM, Legal Services of New Jersey's statewide, toll-free legal hotline, may be able to give you advice and assistance to help you enforce your rights at

the earliest stages of the unemployment benefits process. Early preparation can help you win your claim in a timely manner. You may apply for help online at www.lsnjlawhotline.org or call

1-888-LSNJ-LAW (1-888-576-5529). Hotline hours are 8 a.m. to 5:30 p.m., Monday through Friday. □

*By Keith Talbot, Senior Counsel,
Legal Services of New Jersey*

Private Debt Collection of IRS Debt

IN DECEMBER 2015, Congress passed Fixing America's Surface Transportation Act (or FAST Act). This law requires the IRS to use private collection agencies to collect outstanding inactive tax payments. The four collection agencies under contract with the IRS are CBE Group, Conserve, Performant, and Pioneer. In April 2017, taxpayers began receiving correspondence and calls from these contractors. Following is some information taxpayers should know about this collection process.

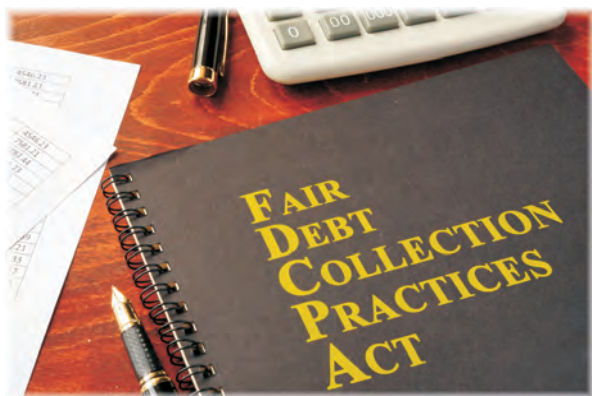
1. The IRS will mail taxpayers several collection notices before referring any accounts to a private debt collector. The debt collector will send a second, separate letter to the taxpayer confirming this transfer. These companies must clearly identify them-

selves as working for the IRS in all communications.

2. Only certain types of accounts are being referred to debt collection agencies. Generally, older, delinquent accounts are being referred. Accounts involving certain types of taxpayers—such as minors, those in combat zones, victims of tax-related identity theft, accounts subject to installment agreements, or accounts classified as an innocent spouse cases—will not be referred.

3. Taxpayers retain their consumer protections. These collection agencies must follow provisions of the Fair Debt Collection Practices Act (FDCPA), the federal law that prohibits deceptive or abusive behavior by private debt collectors. This is a notable exception to the general rule that the FDCPA does not apply to government debts, as they are often not considered consumer debts. Some of the prohibited conduct included under the FDCPA includes:

- Contacting taxpayers by telephone outside of the hours of 8 a.m. to 9 p.m. local time with intent to annoy, abuse, or harass any person at the called number.
- Misrepresenting the debt, including using deception to collect the



Collection agencies must follow provisions of the Fair Debt Collection Practices Act, the federal law that prohibits deceptive or abusive behavior by private debt collectors.

debt (for example, the debt collector’s misrepresentation that he or she is a law enforcement officer).

- Threatening arrest or legal action
- Using abusive language or profanity.

For more information on the FDCPA, go to <https://www.consumer.ftc.gov/articles/0149-debt-collection>.

4. There are other options for low-income taxpayers. For example, taxpayers can have outstanding tax accounts categorized as “Currently Not Collectible,” whereby IRS collection efforts are stopped due to economic hardship. Private debt collectors may not advise the taxpayers of these options, and low-income taxpayers may enter into unsustainable repayment agreements, or forego other life necessities in order to pay the IRS. For more information, see: <https://taxpayeradvocate.irs.gov/get-help/currently-not-collectible>.

5. There may be an increase in tax-related fraud. Taxpayer advocates and consumer groups warn that this arrangement will make it easier for scammers who extort money by pretending to be the IRS. Indications that the call may be a scam include calls that:

- Are very aggressive or threaten you with arrest
- Try to pressure you to make immediate payment
- Ask for your credit or debit card information
- Request payment via gift cards, including Amazon and iTunes, pre-paid debit cards, or a wire transfer.

Tax Legal Assistance Program (TLAP) LSNJ Just Justice

Urgent!!
We intend to levy on certain assets. Please see instructions on page 19.

1040
U.S. Individual Income Tax Return

For Low-Income New Jersey Residents

WHAT IS TLAP?
The Tax Legal Assistance Project (TLAP) provides free legal assistance to low-income New Jersey taxpayers who need help with tax problems and controversies with the IRS. TLAP **does not** prepare tax returns.

HOW CAN TLAP HELP?
Some examples of issues TLAP may be able to help with are:

- IRS notices
- Denied refunds
- Collection activities: tax liens, levies, and wage garnishment
- Earned Income Tax Credit (EITC)
- Innocent/injured spouse
- Exemptions/dependents

HOW DO I GET ASSISTANCE?
To get assistance from TLAP, call LSNJ-LAW®, Legal Services of New Jersey's statewide, toll-free legal hotline, at 1-888-LSNJ-LAW (576-5529) for intake and eligibility screening. Make sure to mention any tax deadlines you are facing. It is also helpful if you have your tax papers, IRS notices, and tax returns available.

Visit our legal help website: www.LSNJLAW.org for tax articles and information about TLAP

Toll-Free Legal Hotline Hours
Monday-Friday 8:00 a.m.-5:30 p.m.

TLAP provides free legal assistance to low-income New Jersey taxpayers who need help with tax problems and controversies with the IRS. TLAP does not prepare tax returns.

6. Taxpayers may lodge a complaint or report misconduct by private debt collectors by calling the TIGTA hotline at 1-800-366-4484, visiting www.tigta.gov, or writing to:

Treasury Inspector General for
Tax Administration
Hotline
Post Office Box 589
Ben Franklin Station
Washington, DC 20044-0589

You may also contact Legal Services of New Jersey’s Tax Legal Assistance Project at 1-888-LSNJ-LAW for any questions or assistance relating to this or any other federal tax problems. □

By Marcia Suarez, Chief Counsel, Legal Services of New Jersey’s Tax Legal Assistance Project

Expungement of Juvenile Records

DID YOU KNOW that you are eligible to expunge your entire record of juvenile adjudications of delinquency if you meet a few simple requirements? You may be eligible, if you meet any of the following conditions:

- Five years have passed since you were discharged from legal custody or supervision (or any court order of delinquency not involving custody or supervision).
- You were not convicted of a crime, disorderly persons or petty disorderly persons offense, or adjudicated delinquent or in need of supervision during the five-year period prior to filing your petition and there is no such pending complaint against you.
- You were never declared a juvenile delinquent based on an act that, if committed by an adult, would be classified as a “non-expungeable” crime (such as murder, robbery, sexual assault, certain drug sale offenses, etc.).

- You never had an adult conviction expunged.
- You never had adult criminal charges (indictable) dismissed following completion of a supervisory treatment or other diversion program (such as PTI).

If you are eligible, you will need to file a petition with the court and follow other procedural steps.

For more information on expungement of juvenile or adult criminal records, contact LSNJLAWSM, Legal Services of New Jersey’s statewide, toll-free legal hotline. You may apply for help online at www.lsnjlawhotline.org or call 1-888-LSNJ-LAW (1-888-576-5529). Hotline hours are 8 a.m. to 5:30 p.m., Monday through Friday.

You can also access our online expungement tool, *Clearing Your Record Online*, on our website, www.lsnjlaw.org. *Clearing Your Record Online* is available in English and in Spanish (*Cómo borrar los antecedentes penales en línea*).

By Akil S. Roper, Chief Counsel, Reentry, Legal Services of New Jersey

LEGAL SERVICES OF NEW JERSEY

Access legal information and resources

www.LSNJLAW.org

GET LEGAL HELP

Contact Our Statewide Legal Hotline, LSNJLAWSM

1-888-LSNJ-LAW (1-888-576-5529)

www.LSNJLAWHOTLINE.org



Expungement: What Drug Convictions Qualify?

MANY PEOPLE with criminal records were arrested or convicted for drug-related offenses, from simple possession of marijuana to sale and distribution of cocaine and heroin. These offenses are commonly referred to as CDS (controlled dangerous substance) offenses. This article gives you guidance as to which CDS convictions can be expunged from your criminal record. You may find information on the waiting period associated with these offenses in other LSNJ articles and available resources.

Sale, Distribution, or Possession with Intent to Sell

- **First or Second Degree.** Sale, distribution, or possession with the intent to sell CDS in the first or second degree is not expungeable.
- **Third or Fourth Degree.** Sale, distribution, or possession with intent to sell CDS, of any kind, may be expunged if it is an offense of the third or fourth degree, but only if the court finds that expungement is in public interest, giving due consideration to the nature of the offense and the applicant's character and conduct since the conviction.

To determine the nature of the offense, the court may review the details and circumstances of your offense including its definition, grade, and elements. Courts may also consider undisputed or proven facts about the crime and its commission including details about what you did, how you acted,

and the harm caused by the offense. You will be required to submit any pre-sentence reports, plea agreements, and trial and sentencing transcripts, if available. The court may also consider related charges that were dismissed, as long as the underlying facts are substantiated or undisputed. The court may not, however, consider unproven claims or allegations. The state must present evidence if it claims that there are "contested" facts which are not of record.

To evaluate character and conduct since the conviction, the court may consider just about anything that shows (or does not show) that you have rehabilitated from your conviction, including:

- Behavior and performance during incarceration, parole or probation;
- Family and community ties;
- Education, vocation, and volunteer work;
- Satisfaction of fines and other legal obligations;
- Distance from the criminal element (physical, mental); and
- Rehabilitation.

The court may also consider whether your conviction has created barriers in your life and, if applicable, your character and conduct prior to the conviction.

Sale, Distribution, or Possession with Intent to Sell Small Amounts of Marijuana and Hashish

Sale, distribution, or possession with intent to distribute 25 grams or less of marijuana or five grams or less of hashish can be expunged. In this case, you have the burden to prove the amount of

CDS involved in your case. Amounts can be found on the judgment of conviction, plea transcript, or other arrest and sentencing documents.

Possession with Intent to Distribute

Generally, possession of CDS with the intent to distribute—any degree—can be expunged. The State might object to your expungement, however, if it believes that the crime you committed was part of a drug operation involving the sale of CDS, and you were an “accomplice” to that scheme (even if you were not personally involved in a sale). Here, the court may look at the circumstances of the offense which tend to show that a sale was actually intended, such as the presence of cash, weapons or paraphernalia common to drug sale operations. Therefore, in order to expunge a conviction for possession with intent to distribute, you may need to establish through trial transcripts, pre-sentence reports, or other evidence that the offense did not involve an intended sale of CDS.

Possession

Convictions for possession of CDS, drug paraphernalia, “simple possession” and other minor drug offenses such as failure to give CDS to police, can be expunged.

Conspiracy

Convictions for conspiracy to possess, distribute, or sell CDS may also be eligible for expungement.

While this article is intended to provide you with general guidance, you should discuss your case with an attorney



Generally, possession of CDS with the intent to distribute—any degree—can be expunged.

or trained specialist who will consider the facts of your case, the context of your entire criminal record history, and your satisfaction of the sentencing requirements.

Prisoner Reentry Project (PREP)

If your income is low, you may qualify for legal help from Legal Services of New Jersey’s Prisoner Reentry Project (PREP). PREP provides assistance in civil matters to eligible inmates and those with criminal records to help their successful transition back into society. You may call our statewide, toll-free legal hotline at 1-888-LSNJ-LAW (1-888-576-5529). You may also apply online at www.lsnjlawhotline.org.

Note: New Jersey recently passed new laws that will affect the expungement of juvenile and adult criminal records. These changes will go into effect in October 2018. We will detail these changes in future issues of *Looking Out For Your Legal Rights* and on our website, www.lsnjlaw.org. In the meantime, you may contact us for details and more information. □

*By Akil S. Roper, Chief Counsel, Reentry,
Legal Services of New Jersey*

Cuáles Son Sus Derechos Legales

Diciembre 2017

Publicado por Los Servicios Legales de Nueva Jersey

¿Sabía usted que puede eliminar un historial completo de las adjudicaciones de delincuencia de un menor si se cumple con ciertos requisitos?

Página 1

Cómo borrar los antecedentes penales:

¿Qué tipo de fallo condenatorio por drogas se puede borrar?

Página 3

Borrar los antecedentes de un menor de edad

¿SABÍA USTED que puede eliminar un historial completo de las adjudicaciones de delincuencia de un menor si se cumple con ciertos requisitos? Podría reunir los requisitos si cumple con alguna de las siguientes condiciones:

- Han transcurrido cinco años desde que se acabó el encarcelamiento o la supervisión legal, (o cualquier otra orden judicial de delincuencia que no tenga que ver con el encarcelamiento o la supervisión).

continúa en la página 2

El boletín de educación jurídica para los habitantes de Nueva Jersey

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- No se le ha declarado culpable de un delito, o delitos o contravenciones contra el orden público, ni se le ha adjudicado como un delincuente o en necesidad de supervisión, durante los cinco años anteriores a la presentación de su petición, y tampoco hay ningún procedimiento pendiente que busque dicha condena.
- A usted nunca se le consideró ser un delincuente precoz por una acción que, de haber sido cometida por un adulto, hubiera sido considerada como un delito imborrable (como el homicidio, robo, agresión sexual, ciertos delitos relacionados con drogas, etc.).
- Nunca se le ha borrado un fallo condenatorio como adulto.
- A usted nunca se le desestimaron cargos penales (procesables) como adulto tras la conclusión de un tratamiento supervisado u otro programa alternativo (como el PTI).

Si usted llena los requisitos, tendrá que presentar una petición ante el tribunal y seguir otros procedimientos.

Para obtener más información sobre la eliminación de los antecedentes penales de un adulto o un menor, contacte a LSNJLAWSM, la línea directa gratuita de asistencia jurídica de los Servicios Legales de Nueva Jersey para todo el estado. Puede solicitar ayuda por medio de la Internet, en el sitio www.lsnjlawhotline.org o llamar al 1-888-LSNJ-LAW (1-888-576-5529). Las horas de servicio son de lunes a viernes, desde las 8 de la mañana a las 5:30 de la tarde.

También puede utilizar nuestro servicio de herramientas, **Cómo borrar los antecedentes penales en línea**, que encontrará en nuestro sitio web www.lsnjlaw.org/sp. Vea la página 6 para obtener más información sobre **Cómo borrar los antecedentes penales en línea**.

Este artículo fue traducido del inglés por Catarina Pedreiro, intérprete/traductora, LSNJ

Cuáles Son Sus Derechos Legales

Con respecto a *Looking Out*

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Comentarios

Si tiene alguna sugerencia o comentario con respecto a *Looking Out*, nos gustaría oírlo. Envíe toda correspondencia a:

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Este boletín de noticias es sólo una información general. Si tiene un problema jurídico, usted debería ver a un abogado.

Una parte del costo de esta publicación se cubrió con la ayuda proporcionada por el fondo IOLTA del colegio de abogados de Nueva Jersey.

Cómo borrar los antecedentes penales: ¿Qué tipo de fallo condenatorio por drogas se puede borrar?

MUCHAS PERSONAS tienen antecedentes penales debido a que fueron detenidos o condenados por delitos relacionados con el uso de las drogas, que van desde la simple tenencia de marihuana hasta la venta y distribución de cocaína y heroína. Estos delitos se conocen comúnmente como delitos involucrando sustancias peligrosas reguladas, por sus siglas en inglés CDS. Este artículo le brinda una guía respecto a cuáles son los fallos condenatorios que pueden ser borrados de sus antecedentes penales, cuando el delito por el que fue encausado involucre este tipo de sustancias. Usted podrá encontrar información sobre el período de espera asociado con cada uno de estos delitos en otros artículos y recursos publicados por LSNJ.

La venta, distribución o tenencia con la intención de vender

- **En primer o segundo grado.** Se refiere a que el fallo por la venta, distribución o tenencia con la intención de vender una sustancia regulada en primer o segundo grado, es imborrable.
- **En tercer o cuarto grado.** La venta, distribución o tenencia con intención de venta de cualquier tipo de sustancia regulada, se puede borrar si se trata de un delito en un tercero o cuarto grado, pero sólo si el juez determina que la anulación se hace tomando en cuenta el interés público, después de haber dado la debida consideración a la

naturaleza del delito y el carácter y la conducta del solicitante desde que se dictó el fallo condenatorio.

Para determinar la naturaleza del delito, el juez podrá revisar los detalles y las circunstancias del delito incluyendo la definición, la gravedad y los elementos del mismo. Los tribunales consideraran los hechos no disputados o demostrados con respecto al delito y su comisión, estableciendo el nexo entre lo que usted realmente hizo, cómo actuó y el daño causado. Se le exigirá que someta todo informe precondenatorio, acuerdo declaratorio, transcripción del juicio y de la imposición de la pena, si estos están disponibles. El juez, de igual manera, podría considerar los cargos que hayan sido desestimados, siempre y cuando los hechos fundamentales no se hayan disputado ni demostrado como verídicos. El tribunal no puede considerar quejas ni alegaciones demostradas. El estado tiene que presentar pruebas si declara que existen hechos “refutados” que no son parte de las actas.

Para evaluar el carácter y la conducta desde que se dictó el fallo condenatorio, el juez puede considerar otros elementos que muestre o no que usted se ha rehabilitado, tales como:

- La conducta y el comportamiento durante el período de encarcelación, libertad condicional, o probatoria.
- Las relaciones con la familia y con la comunidad.

- La capacitación, la vocación y el trabajo voluntario.
- El pago de las multas y otras obligaciones jurídicas.
- El distanciamiento del elemento delictivo (físico, mental); y
- La rehabilitación.

El juez igualmente podría considerar si su condena le ha creado barreras para llevar una vida productiva, de ser pertinente, considerará cómo era su carácter y conducta antes de que se dictara dicho fallo.

La venta, distribución o tenencia con la intención de vender pequeñas cantidades de marihuana y hachís

Un fallo por la venta, distribución o tenencia con la intención de distribuir menos de 25 gramos de marihuana o menos de cinco gramos de hachís, puede ser borrado. En estos casos, usted tiene la obligación de demostrar la cantidad de la sustancia implicada. Las cantidades se pueden encontrar mencionadas en el fallo de la condena, el expediente declaratorio u otro



Generalmente, un fallo por la posesión o tenencia de sustancias reguladas con la intención de distribuirlas—en cualquier grado—puede ser borrado.

documento del arresto y la imposición de la pena.

La tenencia con la intención de distribuir

Generalmente, un fallo por la posesión o tenencia de sustancias reguladas con la intención de distribuirlas—en cualquier grado—puede ser borrado. Sin embargo el Estado se podría oponer a que se borren sus antecedentes, en especial si se cree que el delito que usted cometió era parte de una operación delictiva que implicaba la venta de una sustancia regulada, y que usted era un “cómplice” de esa argucia (incluso si usted no estuvo implicado personalmente en una venta). En este caso, el juez podría valorar las circunstancias que concurren en la comisión del delito, tales como la presencia de dinero en efectivo, el uso de armas o parafernalia relacionada con la venta de drogas, lo cual tiende a mostrar que en realidad hubo una intención de venta. Por lo tanto, para borrar un fallo condenatorio por la tenencia con intención de distribuir, tal vez necesite establecer por medio de las transcripciones del juicio e informes precondenatorios, u otra prueba que demuestre que el delito se llevó a cabo sin la intención de vender una sustancia regulada.

La tenencia

Las condenas por tenencia de sustancias reguladas, parafernalia relacionada con las drogas, la simple tenencia o “tenencia simple” u otros delitos menores relacionados con drogas tales como, no entregar CDS a la policía, pueden ser borradas.

Asociación para delinquir

Las condenas por asociación delictiva para tener, distribuir o vender sustancias reguladas también podrían reunir los requisitos para ser borradas.

Aunque este artículo tiene la intención de proporcionarle una guía general, usted debería hablar con un abogado o especialista que analice los hechos específicos de su caso, el contexto de todos sus antecedentes penales y si usted ha cumplido con los requisitos de la sentencia.


El proyecto para la reincorporación del prisionero, (PREP)

Si tiene bajos ingresos, es posible que cumpla con los requisitos para recibir la ayuda jurídica del Proyecto de los Servicios Legales de NJ para la Reincorporación del Prisionero (PREP). El Proyecto (PREP) brinda ayuda jurídica en asuntos civiles a las

personas que están encarceladas y a aquellos con antecedentes penales que llenan los requisitos para que estos lleven a cabo una reincorporación exitosa a la sociedad. Puede llamar a nuestro número gratuito, la línea directa de asesoramiento jurídico para todo el estado, marcando el 1-888-LSNJ-LAW (1-888-576-5529). También puede solicitar por medio de la Internet, www.lsnjlawhotline.org.

Nota: Nueva Jersey recientemente aprobó leyes que afectarán la eliminación de los antecedentes de jóvenes y adultos. Estos cambios entrarán en vigor en octubre de 2018. En ediciones futuras de “Cuáles son sus derechos legales” mencionaremos en detalle estos cambios. Mientras tanto, puede ponerse en contacto con nosotros para obtener detalles e información adicional.

Este artículo fue traducido del inglés por Al Moreno, coordinador del servicio lingüístico en LSNJ.



LSNJLAWSM
LA LÍNEA DIRECTA GRATUITA
Asesoramiento jurídico y recomendaciones
Para todo habitante de Nueva Jersey de bajos ingresos que reúna los requisitos
Lláme o solicite ayuda en línea si tiene problemas legales civiles.
LSNJLAWHotline.org
Visite nuestro sitio Web: www.LSNJLAW.org, que contiene ayuda legal.
LSNJLAWSM es operada por los Servicios Legales de Nueva Jersey. **LSNJ JUSTICE**

¿Si no puedo encontrar un abogado, a dónde puedo acudir?

Llame a LSNJLAWSM, la línea directa gratuita de asistencia jurídica de los Servicios Legales de Nueva Jersey para todo el estado, al 1-888-LSNJ-LAW (1-888-576-5529) o solicite por medio de la Internet (sólo en inglés por el momento) en www.lsnjlawhotline.org. El horario de la línea directa es de lunes a viernes, desde las 8 de la mañana hasta las 5:30 de la tarde. Si no llena los requisitos para recibir asistencia de los Servicios Legales, la línea directa le enviará a otras posibles fuentes de información.



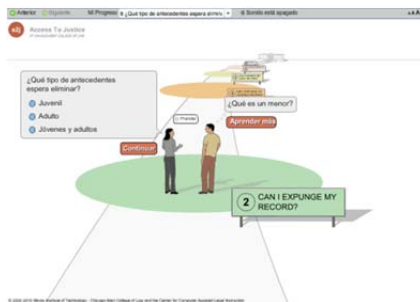
El programa de LSNJ **CÓMO BORRAR LOS ANTECEDENTES PENALES EN LÍNEA** es un recurso gratuito en la Internet diseñado para ayudarle a borrar sus antecedentes penales como adulto y como menor de edad y le proporcionará información valiosa sobre la ley y el proceso para la eliminación de los antecedentes en Nueva Jersey.

CÓMO BORRAR LOS ANTECEDENTES PENALES EN LÍNEA

El programa está diseñado para dar a aquellos que tienen uno o muy pocos delitos, la oportunidad de un nuevo inicio al borrar de sus historiales las detenciones y condenas. Está disponible en Nueva Jersey a aquellos que cumplen ciertos requisitos.

El programa de LSNJ **CÓMO BORRAR LOS ANTECEDENTES PENALES EN LÍNEA** proporciona varias funciones cruciales para el proceso de eliminación:

- **La entrevista para determinar la elegibilidad**-le guiará a través de una serie de preguntas y le indicará si usted reúne los requisitos para eliminar sus antecedentes como adulto o como menor de edad.
- **El creador de formularios**-utilizando la información que usted proporcione, generará los formularios que usted tendrá que presentar ante el tribunal para la eliminación de sus antecedentes.
- **Los vídeos instructivos**-proporcionan paso-a-paso información detallada sobre el proceso.



Otros recursos le proporcionarán orientación sobre la exención de costas y otros enlaces e información, además de nuestro manual original *Cómo borrar los antecedentes penales*.



Para acceder al programa, visite el sitio www.lsnjlaw.org y pulse en el icono azul **CÓMO BORRAR LOS ANTECEDENTES PENALES EN LÍNEA** ubicado en el lado derecho de la página.

Si necesita asistencia jurídica civil, no dude en llamar a LSNJLAWSM, nuestra línea directa gratuita de asistencia jurídica, 1-888-LSNJ-LAW (1-888-576-5529) o visite nuestro sitio Web, www.lsnjlaw.org/sp.