

# NEWS BULLETIN

## Maine Automobile Dealers Association

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2021-13

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## TEMPORARY PLATES ALLOWED FOR 30 DAYS (effective October 18, 2021)

The Legislature this year enacted, and the Governor has signed into law, MADA's proposal to increase the time allowed for use of a Temporary Plate from the current 14 days to 30 days. **The effective date of this new limit is October 18, 2021** because Legislative changes become effective 90 days after the Legislature finally adjourns. Dealers will be able to use the 30-day period beginning with sales that are finalized on October 18.

MADA very much appreciates the efforts of Senator Brad Farrin, our prime sponsor for this proposal, as well as the support of the Secretary of State, the Bureau of Motor Vehicles and the Maine Municipal Association. The primary reason for this support, and the unanimous votes of the Legislature's Transportation Committee as well as the full Legislature, is the ongoing problem of obtaining the previous title in a timely manner. Legislators also noted that the purchasers could use the extra time to get funds together for excise tax and registration fees.

## EMPLOYMENT APPLICATION CHANGES

Your employment application can no longer include a question about a person's prior criminal convictions, and therefore your application must exclude any such inquiries. The Legislature considered a number of proposals on the topic of an applicant's prior transgressions of the law, but eventually settled on this so-called "Ban the Box" approach, at least for this year. The new law does, however, allow such questions during an interview.

To assist dealerships with the revised employment application process, MADA and its attorney have drafted a sample application which you can use or adjust to your own approach. The application is the same one we distributed in advance of MADA's late September employment law WEBEX presentations.

Enclosed with this Bulletin is the revised sample employment application as well as a memo on the interview process.

During the Employment Law WEBEX presentation, a few related questions were submitted, which are briefly addressed below:

- a) An employer may continue to ask for an applicant's driver license number and Bureau of Motor Vehicle driving record as part of the application – you do not have to wait for the interview;
- b) Asking about an applicant's prior criminal convictions during an interview is **NOT** considered discrimination – persons with a criminal or conviction history are not a protected class, if that history is the only issue; in addition, focusing this question on the interview process provides the opportunity to fully discuss the specifics of any criminal or conviction history and its potential relationship to the job being discussed. A more complete response to the WEBEX questions will be sent to dealerships with future communications.

# APPLICATION FOR EMPLOYMENT

PLEASE READ THIS APPLICATION THOROUGHLY AND COMPLETE IT TRUTHFULLY. [DEALER] PERFORMS CRIMINAL HISTORY CHECKS ON ALL APPLICANTS. ALL PERSONS OFFERED EMPLOYMENT WILL BE REQUIRED TO PROVIDE THEIR DATE OF BIRTH AND SOCIAL SECURITY NUMBER AT THE TIME OF THEIR CONDITIONAL OFFER TO FACILITATE THIS CHECK.

ALL PERSONS OFFERED EMPLOYMENT WILL BE REQUIRED TO FURNISH PROOF OF IDENTITY AND LEGAL WORK AUTHORIZATION UPON COMMENCEMENT OF EMPLOYMENT.

Title of Position Applying For:

\_\_\_\_\_ Full-time \_\_\_\_\_ Part-time \_\_\_\_\_ Temporary  
(check one)

## PERSONAL DATA

Applicant's Full Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email address: \_\_\_\_\_

Home Telephone No: \_\_\_\_\_

Cellphone Number: \_\_\_\_\_

May we call you at work? \_\_\_\_\_ at home? \_\_\_\_\_

When is the best time to call you? \_\_\_\_\_

## QUALIFICATIONS AND JOB SKILLS

Do you have a currently valid state driver's license? \_\_\_\_\_  
Yes No

Driver's License No. \_\_\_\_\_

State of Issuance: \_\_\_\_\_

Have you ever applied for employment or been employed by [DEALER] or any of its affiliated companies before? \_\_\_\_\_  
Yes No

If yes, please describe all positions held, the dates of employment and reasons for leaving.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

U.S. Military Service - list branch, dates of service, rank attained and nature of discharge.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please note that dishonorable discharge from the U.S. Armed Forces will not necessarily be a bar to employment. Several factors are taken into account in determining an applicant's suitability for employment.

If employed by [DEALER], will you continue to receive compensation from any other employer or business for services you will continue to perform on behalf of that employer or business? \_\_\_\_\_  
Yes No

Please describe any special skills, training, experience or credentials you feel add to your qualifications for the position sought with us (Please use additional sheets if you need more space to answer):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## REFERENCES

Identify three (3) **work-related** references and provide complete contact information as requested below:

Reference No. 1

Name Position/Company Telephone/Contact Info (Email)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reference No. 2

Name Position/Company Telephone/Contact Info (Email)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reference No. 3

Name Position/Company Telephone/Contact Info (Email)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## PAST EMPLOYMENT EXPERIENCE

Beginning with your most recent job (with your current employer), list any and all prior work experience that you have had during the past 7 years. Please use additional pages as necessary. [DEALER] reserves the right to contact any employer or person identified in this list for information or employment verification purposes.

Please note that failure to provide complete information may result in your disqualification from consideration for employment.

Most Recent/Current Employer

Dates of Employment Name of Company and Your Supervisor Company Address / Telephone Number / Email Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## **RESPONDING TO MAINE'S BAN-THE-BOX RESTRICTIONS: COLLECTING CRIMINAL HISTORY INFORMATION PRIOR TO HIRE**

As of October 18, 2021, Maine law specifically prohibits employers from asking applicants if they have ever been convicted of a crime on an application form and prohibits job postings and applications from stating that a person with a criminal history may not apply or will not be considered for a position. This applies to all employers, including retail auto and truck dealers.

The Equal Employment Opportunity Commission (EEOC) cautions employers about asking for this information later in the selection process. While there is no federal or Maine law prohibiting such questions about an applicant's criminal history during a job interview, if dealers do ask, their inquiries should only be job-related and consistent with business necessity.

Maine's law allows questions during the selection (e.g. interview) process, as well as criminal background checks. However, these are permitted only after it has been determined that an applicant is qualified for the position.

### **Rules of Thumb**

1. No initial application form (whether in electronic or hard copy form) should contain inquiries about an applicant's criminal history. An initial application can contain a statement that qualified applicants will be required to undergo a criminal background check process.
2. No job advertisement should contain any form of absolute prohibition stating that persons with a criminal history may not apply or will not be considered for a position.
3. Limit in-person and telephone interviews to applicants who have established that they meet the dealer's minimal qualifications for the position at issue. If an applicant has failed to complete an application or if the dealer is waiting for the submission of additional information from an applicant, do not arrange for an interview if you expect to inquire about the applicant's criminal history, until after you have determined that the applicant is qualified for further consideration.
4. Once an applicant has met the minimal qualifications and has been scheduled for an in-person or telephone interview, use a talking points outline (see below) to inquire about criminal history issues. Try not to deviate from your outline.
5. Consider performing all formal criminal background checks only after an applicant has been issued a conditional job offer. Use the formal criminal background check as a means of verifying the accuracy of the information provided by an applicant during the interview process.
6. Be sure to maintain records all notes and records relating to an applicant's criminal history in a secure location which is not made accessible to unauthorized persons.

### **The Job Interview**

1. Your outline should start by introducing the basis for the job-relatedness and business-related nature for the inquiries. Use direct questions. Do not offer opinions or editorialize.

2. Your outline should make clear that: (1) whether an applicant has been criminally charged or convicted of a crime does not necessarily prohibit them from being hired, and; (2) several factors are taken into account by the dealer in determining an applicant's suitability for employment. It is a case-by-case assessment.

### **INTERVIEW TALKING POINTS OUTLINE**

Once an applicant has been deemed qualified for a position and we schedule an interview, we begin the process of collecting information about their background. Part of this information involving criminal history information.

Our dealership is well known in the local community. Our reputation is one of our most valuable assets and we strive to protect it. The position you are being considered for [places you in close contact with customers and members of our community / provides access to sensitive financial and personal information about our customers and members of our community / will give you responsibility for handling business transactions for the dealership and will give you access to money].

Because of these considerations, I am going to ask you some questions about your personal background. Before I do, please understand that an applicant's criminal history does not necessarily prohibit them from being hired. In making our hiring decisions, several factors are taken into account in determining a person's applicant's suitability for employment.

If you are provided with a conditional offer of employment, we will arrange for a criminal background check and review the information we receive before you are given a specific start date. Depending on the information we receive, we may withdraw your offer or ask you to provide us with additional information.

Do you understand these points? Are you prepared to continue?

Have you ever been charged with a crime by a law enforcement agency at any time in your life?

How many times?

[If multiple times, verify the precise number of times charged.]

When were you charged?

[Have the applicant link an approximate date to each charge.]

Where were you living when you were charged?

[Have the applicant link a location to each charge.]

What were you charged with?

[For each time charged.]

Did that charge result in a criminal conviction?

[For each time charged.]

Please explain the circumstances related to that conviction for me.

[For each time the applicant links a conviction to a criminal charge.]

What was the disposition -- the sentencing requirements (e.g., prison time, fines, community service, and probation) – associated with that conviction?

Have you completed all the sentencing requirements associated with that conviction?

[Be sure to cover every instance identified by the applicant.]

Is there any information you would like to provide in connection with your conviction?

[Allow the applicant to provide whatever information s/he wishes to convey about the conviction, the underlying circumstances, mitigating circumstances, what they have learned, and why they feel suitable for the position at issue.]

### **Supplemental Notes**

The fact that an individual has been charged is not proof that s/he engaged in criminal conduct.

An arrest means only that a person was taken into police custody and temporarily held by the police. An arrest is not a finding that a person was guilty of a crime – or that a person has done anything wrong at all. After a person is arrested, a prosecutor decides whether to charge that person with a crime. A person may never be charged with a crime following an arrest. Also, a person may be charged but the charges may later be dropped or dismissed. Finally, a person may be charged, go to trial and be acquitted (found “not guilty”). Employers should be interested only in charges that result in convictions.

A conviction means that a person has been found guilty of a crime by a court or that you have agreed to plead guilty to a crime. There are many levels of crimes, including both misdemeanors and felonies. If a person is found guilty of, or plead guilty to, any level of crime, that person is generally considered to have a conviction. A person may have been convicted of a crime even if they did not spend any time in jail. If a person just paid a fine, was put on probation, did community service, or received a conditional or unconditional discharge in connection with a crime, that person may still have a conviction record. Finally, in some states, low-level offenses – such as “violations” – are not technically criminal convictions.