

## Jobs program for offenders could lead to discrimination

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A new program intended to help those with criminal records gain employment appears contradictory to the federal government's desire to make it tougher for offenders to put their past behind them and could leave them vulnerable to discrimination by employers.

Earlier this month, CBC News had an article about the government's push to help offenders with criminal records find jobs. The "Hiring an Offender" page encourages employers looking for skilled labour to hire from within Correctional Service of Canada's pool of workers. It even mentions a wage subsidy program that may be available to employers depending on their industry and geographic location.

However, in March 2012, the federal government's omnibus Safe Streets and Communities Act introduced many changes including increasing the ineligibility period to apply for a record suspension from three to five years for a minor offence, and from five to 10 years for indictable offences.

According to **Pardon Services Canada**, the legislation also rendered certain offenders, such as those with three or more convictions for indictable offences, permanently ineligible for a pardon, or what is now known as a record suspension, and raised the cost of getting a federal pardon to \$631 from \$150.

The legislative changes to the Criminal Records Act have disqualified many people from being able to obtain a pardon, and by virtue, excluded them from the workforce.

It's a case of "five steps backwards and one questionable step forward," says employment lawyer Danny Kastner with Turnpenny Milne LLP.

He says the changes in the Safe Streets and Communities Act "stigmatizes and isolates those with criminal records," making it far more difficult than before to obtain a pardon. On the other hand, the Hiring an Offender program is

meant as a response to the chronic problem of those with criminal histories being denied work because of their criminal records.

Kastner notes the legislative backdrop is important to consider. The Canadian Human Rights Act does not protect workers from discrimination based on their criminal records unless they have received a pardon or record suspension. This means workers can be denied employment or dismissed because of their records, with no repercussions for the employer. As a result, the more difficult it is for workers to obtain pardons, the longer they are exposed to legal discrimination based on their criminal records.

The Ontario Human Rights Code protects workers from discrimination based on their criminal record but only in cases where it is provincially regulated employment, regardless of whether they have received a pardon. It would not apply in the case of federally regulated employers in Ontario.

"You can't discriminate in Ontario on the basis of record of offences if a person has received a pardon but it also stipulates that you can't discriminate based on a provincial offence," he says.

Kastner also wonders if workers in the program will be paid a fair wage.

"Will there be wage controls? If not, prospective employers are likely to take advantage of the workers' vulnerable status as 'offenders' to pay below-market wage rates," he says.

The name of the program may also impede its effectiveness as some employers may be concerned their clients will find out they are hiring offenders.

"I have to wonder how effective a jobs program will be that labels workers 'offenders,'" he says.

