

Criminal Background Checks Just Got A Little Harder

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Many employers conduct criminal background checks for applicants or new hires in order to complete due diligence. In fact, the National Consumer Law Center reports that a whopping 93 percent of employers run criminal background checks on some job candidates, and 73 percent of employers conduct such checks on all potential new hires.

However, as part of its continuing effort to insert itself into the everyday lives of every workplace in the country, the Equal Employment Opportunity Commission has issued new guidelines that aim to curtail the use of arrest and conviction records for employment purposes. Now, every employer that chooses to run criminal background checks is at risk of facing a discrimination charge or lawsuit.

What the EEOC has made clear for more than 20 years is that it believes it is dangerous for an employer to automatically bar an applicant from consideration simply because of a past arrest or conviction. The agency points to sociological statistics that show that people of certain races and national origins are disproportionately arrested and convicted of crimes.

Therefore, the agency has said, if an employer issues a blanket prohibition on hiring for anyone with a criminal background, without further regard to the specific circumstances involved, that employer may well be in violation of Title VII (the country's most widely-applied anti-discrimination statute).

The EEOC, and the courts, may no longer accept the seemingly obvious rationalization that applicants with theft convictions are more likely to steal. Instead, employers should be prepared to defend their policy with research, evidence or statistics that demonstrate an increased likelihood that such applicants are more likely to steal than others are.

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