



Reevaluate Criminal Background Check Policies

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The U.S. Equal Employment Opportunity Commission is serious about investigating and eradicating discrimination based on the use of criminal background check information. Recently, PepsiCo Americas Beverages settled a case and agreed to pay \$3.13 million and provide job offers and training in a case filed by the EEOC. The EEOC's investigation revealed that more than 300 African-American applicants were adversely affected by Pepsi's criminal background policy. Under Pepsi's former policy, applicants were denied employment if they had pending arrests, even if they had no convictions. Applicants with certain minor convictions also were denied employment under the policy. The EEOC found Pepsi's policy unlawful because it denied employment based on records the agency determined were not relevant to the jobs.

Under the EEOC's recently issued guidance on employers' use of criminal background checks, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, employers that screen applicants' criminal backgrounds must prove that their use of the information is job related and does not result in discrimination against minorities. Although not binding to employers, the EEOC will be enforcing Title VII with the guidance in mind.

In light of the EEOC's updated guidance on the use of criminal background check information in employment decisions, all employers, but especially those in the hospitality industry, that use criminal background checks extensively to protect their guests and property must carefully review their current policies or practices. Be certain to consider the state law limits and assure that the credit reporting agency you use is in full compliance with the FCRA and state laws. Become familiar with the EEOC's updated guidance. Keep in mind the EEOC's guidance is not law, but only the EEOC's interpretation of the law. No "one-size-fits-all" or "model" criminal background policy is suitable for all employers.

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