

Notice #2 for Employers Regarding Job Postings Containing Criminal Record Exclusions

The public workforce system must comply with federal civil rights laws, including those concerning nondiscrimination in employment. In addition, as explained in the information below provided by the Equal Employment Opportunity Commission (EEOC) – the agency that administers and enforces Title VII of the Civil Rights Act of 1964, as amended – an employer may be liable under Title VII for its use of criminal record information to make employment decisions depending on the factual circumstances under which the criminal records are used. The workforce system has identified criminal record exclusions or restrictions in the job announcement submitted for posting by this employer or in a job announcement referenced in a Job Bank.

The employer should take this opportunity to remove or edit the posting as needed to ensure that the employer and the public workforce system are in compliance with the law. If the employer wishes to post the announcement as is, the announcement will be posted along with information about the civil rights laws that may apply to such restrictions.

EEOC Information on Employer Consideration of Arrest and Conviction History

Title VII of the Civil Rights Act of 1964 makes it unlawful to discriminate in employment based on race, color, national origin, religion, or sex. This law does not prohibit an employer from requiring applicants to provide information about arrests, convictions or incarceration. But, employers may not treat people with the same criminal records differently because of their race, national origin or another protected characteristic. In addition, unless required by federal law or regulation, employers may not automatically bar everyone with an arrest or conviction record from employment. This is because an automatic bar to hiring everyone with a criminal record is likely to unjustifiably limit the employment opportunities of applicants or workers of certain racial or ethnic groups.

If an employer's criminal record exclusion policy or practice has a disparate impact on Title VII-protected individuals, it must be job related and consistent with business necessity. For greater detail on meeting this standard, please see the EEOC's Guidance referenced below.

Since an arrest alone does not necessarily mean that someone has committed a crime, an employer should not assume that someone who has been arrested, but not convicted, did in fact commit the offense. Instead, the employer should allow the person to explain the circumstances of the arrest to determine whether the conduct underlying the arrest justifies an adverse employment action. These rules apply to all employers that have 15 or more employees. For more information:

www.eeoc.gov/laws/guidance/arrest_conviction.cfm

www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm

www.nationalreentryresourcecenter.org/documents/0000/1082/Reentry_Council_Mythbuster_Employment.pdf

Other Relevant Information

The Fair Credit Reporting Act (FCRA) imposes a number of obligations on employers that wish to use criminal background checks to screen applicants. This law requires the employer to obtain the applicant's permission before asking a background screening company for a criminal history report, and requires the employer to provide the applicant with a copy of the report and a summary of the applicant's rights before the employer takes an adverse action (such as denying an application for employment) based on information in the criminal history report. For more information:

business.ftc.gov/documents/bus08-using-consumer-reports-what-employers-need-know

The California Investigative Consumer Reporting Agencies Act, which limits reporting by consumer reporting agencies of criminal convictions that are older than seven years, and California Labor Code § 432.7 and California Code of Regulations, Title 2, § 7287.4(d)(1), which prevent employers from asking about arrests that did not lead to conviction and about misdemeanor convictions that have been dismissed pursuant to California Penal Code § 1203.4.

Employers should also be aware of the Work Opportunity Tax Credit (WOTC) and the Federal Bonding Program (FBP), two incentives that support employers' hiring of individuals with conviction histories. The WOTC provides a credit of 25-40% of first-year wages, or \$1,500-\$2,400, for employers that hire qualified individuals with felony convictions. For more information:

www.doleta.gov/wotc

www.edd.ca.gov/Jobs_and_Training/WOTC_Frequently_Asked_Questions.htm/

Through the FBP, funded and administered by the U.S. Department of Labor, fidelity insurance bonds are available to reimburse the employer for any loss due to employee theft of money or property, with no employer deductible. For more information:

www.bonds4jobs.com/index.html

The U.S. Department of Labor enforces Title VI of the Civil Rights Act of 1964 as it applies to public workforce system programs or activities receiving federal financial assistance, as well as the nondiscrimination provisions of the Workforce Investment and Wagner-Peyser Acts, which fund the public workforce system. Title VI and its implementing regulations prohibit any program or activity receiving federal financial assistance from excluding from participation in, or denying the benefits of the program, or otherwise subjecting anyone to discrimination, on the ground of race, color, or national origin. The nondiscrimination provisions in the laws that fund the public workforce system apply to discrimination on these bases, as well as discrimination on other grounds including disability, age, sex, and religion.