

Arrest and Conviction Records in Employment

An employer's use of an individual's criminal history in making employment decisions may, in some instances, violate Title VII.



Arrest vs. Convictions

The fact of an arrest, without more, does not show that criminal conduct occurred.

A conviction record is usually evidence that a person engaged in criminal conduct.

Employer Best Practices

The following are examples of best practices for employers who are considering criminal record information when making employment decisions.

General

- Eliminate policies or practices that exclude people from employment based on any criminal record.
- Train managers, hiring officials, and decision-makers about Title VII and its prohibition on employment discrimination.

Developing a Policy

- Develop a narrowly tailored written policy and procedure for screening applicants and employees for criminal conduct.
- Identify essential job requirements and the actual circumstances under which the jobs are performed.
- Determine the specific offenses that may demonstrate unfitness for performing such jobs.
 - o Identify the criminal offenses based on all available evidence.

Employer Best Practices

- Determine the duration of exclusions for criminal conduct based on all available evidence.
- o Include an individualized assessment.
- Record the justification for the policy and procedures.
- Note and keep a record of consultations and research considered in crafting the policy and procedures.
- Train managers, hiring officials, and decision-makers on how to implement the policy and procedures consistent with Title VII.

Questions about Criminal Records

- When asking questions about criminal records, limit inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity
- Keep information about applicants' and employees' criminal records confidential.

The EEOC

The mission of the Equal Employment Opportunity Commission is to eradicate employment discrimination by enforcing the federal civil rights employment laws through administrative and judicial actions, education and technical assistance.

The EEOC provides a range of informational materials and assistance to individuals and businesses with rights and responsibilities under the laws enforced by EEOC.

Most materials and assistance are provided to the public at no cost. Additional specialized training and technical assistance are provided on a fee basis under the EEOC Education, Technical Assistance, and Training Revolving Fund Act of 1992.

Visit www.eeoc.gov for additional information about EEOC and for a schedule of EEOC seminars and products search under www.eeotraining.eeoc.gov.

For More Information

EEOC Policy Guidance and Statements on Arrest and Conviction Records

<http://www.eeoc.gov/policy/docs/convict1.html>
http://www.eeoc.gov/policy/docs/arrest_records.html
<http://www.eeoc.gov/policy/docs/race-color.html#VIB2conviction>

FTC Guidance on the Use of Arrest and Conviction Records Under the Fair Credit Reporting Act (FCRA)

The FCRA imposes a number of requirements on employers who wish to use criminal background checks to screen applicants and/or employees. Please visit the following websites for more information:

<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre36.shtm>
<http://business.ftc.gov/documents/bus08using-consumer-reports-what-employers-need-know>

Regarding Federal Regulations, visit:
www.gpo.gov/fdsys

For Suitability Determinations Criteria, search under 5 CFR 731.202

For Excepted Service Disqualifying Factors, search under 5 CFR 302.203

Regarding the Bond Amendment, visit:
http://www.dss.mil/about/dss/pressroom/2009/bond_amendment.pdf

Regarding Federal Background Investigations, visit: <http://www.opm.gov/investigate/>

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U.S. Equal Employment Opportunity Commission

800-669-4000 800-669-6820 TTY www.eeoc.gov



Arrest and Conviction Records in Employment ***BEST PRACTICES***

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 (Title VII) which prohibits employment discrimination based on race, color, religion, sex (including pregnancy), or national origin.

Title VII applies to all employers that have 15 or more employees, including private sector employers, the federal government and federal contractors.

The EEOC also enforces other anti-discrimination laws that prohibit employment discrimination based on age (40 or older), disability and genetic information.