

MODEL EMPLOYER CHECKLIST

- ✓ Background checks cost money and can be inaccurate. Carefully survey positions to determine which require a background check.
- ✓ Do not inquire into criminal history on the initial application. Instead, delay the inquiry until the final stages to save personnel time and resources.
- ✓ Include notice on your job application that a conviction is not an automatic bar to employment.
- ✓ To avoid violating federal law, do not ask about or consider arrest records .
- ✓ Be sure to comply with the Fair Credit Reporting Act requirements.
 - *Provide notice & obtain worker consent*
 - *Give applicant a copy of the background report prior to any rejection*
 - *Allow applicant to correct information*
- ✓ Comply with federal law by only considering convictions that are both job-related and recent. Consider the circumstances surrounding the offense and any evidence of rehabilitation.
- ✓ Give applicant a written notice of the potentially disqualifying conviction(s) and allow applicant to provide information regarding the offense(s), including evidence of rehabilitation.

WHERE CAN I GET MORE INFORMATION?

The use of criminal records in employment decisions is regulated by civil rights and consumer protection laws.

FEDERAL CIVIL RIGHTS LAW

Title VII of the Civil Rights Act of 1964 prohibits selection policies or practices that have a disparate impact on protected classes of people. Because using criminal records to screen candidates for employment has a disproportionate impact on people of color, a refusal to hire because of a past conviction is legal only where the conviction is job-related and the refusal to hire is required by “business necessity.”

The EEOC enforces Title VII and has relevant guidances available at www.eeoc.gov. Your state may provide additional legal obligations.

FEDERAL CONSUMER PROTECTIONS LAW

The Fair Credit Reporting Act applies to commercially prepared background checks and contains notice and consent requirements.

The FTC enforces the Fair Credit Reporting Act and provides information at www.ftc.gov.

U.S. DEPARTMENT OF LABOR

The U.S. Department of Labor enforces affirmative action and equal employment opportunity requirements in the federal contract workforce. Information is available at www.dol.gov/ofccp.

NATIONAL EMPLOYMENT LAW PROJECT

Additional information is available at www.nelp.org.

CRIMINAL BACKGROUND CHECKS

A BEST PRACTICES GUIDE FOR EMPLOYERS



Benefits of being a model employer

- Access to the most qualified candidates
- Qualified, competent and safe workforce
- Promote diversity in the workplace
- Increase efficiency
- Contribute to safe, secure communities
- Limit liability under federal and state laws

This pamphlet provides information on complying with federal civil rights and consumer protection laws, strengthening the integrity of criminal background checks, and creating a diverse workforce.

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National Employment Law Project

THE ISSUE

More than one in four U.S. adults has a criminal record on file with a state, so background checks have a large impact on hiring decisions and the nation's workforce. These records include arrests that never led to conviction and decades-old minor misdemeanors. While non-conviction arrests and minor offenses often have no bearing on a worker's ability to safely and competently perform job duties, employers frequently use this information to deny employment, which may violate civil rights and consumer protection laws.

IT MAKES GOOD ECONOMIC SENSE

Beyond ensuring compliance with the law, fair background check standards make good economic sense. Employers seek to ensure that they have access to the best qualified applicants. Given that more than one in four of all Americans have a criminal record, overbroad policies that exclude anyone with a criminal record means that you are potentially eliminating some of the most qualified workers. Also, workers given a second chance may prove to be your most loyal and motivated employees.

IT PROMOTES PUBLIC SAFETY

Employing people with criminal records also promotes public safety. Allowing qualified candidates access to good jobs reduces recidivism—lowering criminal justice costs and strengthening our communities.

THERE ARE FINANCIAL BENEFITS

Federal and state programs provide incentives to hire people with criminal records, including the federal Bonding Program (www.bonds4jobs.com) and Work Opportunity Tax Credit (www.doleta.gov/business/incentives/opptax/). Check your state for additional incentive programs.

HOW DO I BECOME A MODEL EMPLOYER AND COMPLY WITH THE LAW?

STEP 1

Identify positions that require a background check under state or federal law, or that require a background check due to the sensitivity of the job. You are not required by law to perform a background check for most positions.

STEP 2

Do not request criminal history information on the initial job application. Inquire into an individual's criminal history only after the applicant has been selected as a final candidate.

Many cities, states, and even some federal agencies delay background checks because "it is generally more practical and cost-effective." (U.S. Office of Personnel Management Regulations.)

STEP 3

If you conduct a background check, be sure to comply with the legal requirements of the **FAIR CREDIT REPORTING ACT**.

First, give notice to the applicant and get the worker's consent. If the background report includes criminal history information, provide a copy to the applicant and allow the applicant to contest or explain the information included before making an employment decision.

See the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*) and the Federal Trade Commission (www.ftc.gov) for your obligations. Your state may have additional requirements.

STEP 4

Consider only job-related and recent convictions when making an employment decision. Consideration of arrest information likely violates federal civil rights law and may violate state law.

See the EEOC Policy Guidance on the Consideration of Arrest Records (www.eeoc.gov/policy/docs/arrest_records.html).

STEP 5

Be sure to comply with the legal requirements of **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964** (42 U.S.C. 2000e).

Deny employment only if the conviction is job-related and doing so is consistent with "business necessity."

Be sure to consider the following factors:

1. The nature or gravity of the offense or offenses;
2. The bearing, if any, of the offense(s) on any specific responsibilities of the job or position;
3. The time that has elapsed since the offense;
4. The age of the applicant or employee at the time of the offense;
5. Any evidence of rehabilitation.

See the EEOC Policy Statement on the Issue of Conviction Records (www.eeoc.gov/policy/docs/convict1.html).

STEP 6

Let the community know that you are a model employer committed to considering all qualified candidates and building a diverse workforce.

Reach out to the local Chambers of Commerce, Workforce Investment Boards and other local partners to publicize your model practices.

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