



## **EMPLOYMENT LAWS AFFECTING INDIVIDUALS WITH CRIMINAL CONVICTIONS**

**Title VII of the Civil Rights Act protects people with criminal records from employment discrimination.**

The Equal Employment Opportunity Commission (EEOC) has interpreted Title VII of the Civil Rights Act – which prohibits private employers and state and local governments from discriminating in employment decisions based on race, color, gender, national origin or religion - to prohibit employment policies that exclude individuals on the basis of their conviction records. In the absence of a justifying business necessity, such policies violate Title VII and are illegal. In order to establish business necessity, the employer must show that it considered three factors in making an employment decision:

1. the nature and gravity of the offense(s);
2. the time that has passed since the conviction and/or completion of the sentence;  
and
3. the nature of the job held or sought.

**A few states forbid blanket discrimination against individuals with criminal histories.**

A handful of states bar employers from considering felony and misdemeanor convictions unless they relate to the applicant's suitability for employment. These laws require that there be a "direct," "substantial," or "reasonable" relationship between the circumstances of the offense and the job in question. Factors that are generally considered include the time elapsed since the offense, the person's age when the person committed the offense, the seriousness of the offense, the person's efforts toward rehabilitation, and the employer's interest in protecting the property and welfare of the workplace or the general public. Whether a particular applicant's conviction is related to the job in question is determined on a case-by-case basis.

**In most states employers are allowed to ask job applicants about both their arrest and conviction records.**

Generally, employers are permitted to ask job applicants if they have ever been convicted of an offense; and employers may legally consider an applicant's conviction(s) in making hiring decisions (subject to the limitations stated above). If an applicant fails to disclose such information or misrepresents the information, and the employer discovers the deception, the

individual can be legally fired.

Moreover, only a handful of states have laws forbidding employers from considering arrest information when making an employment decision and from inquiring whether an applicant has ever been arrested. On the federal level, the EEOC holds that employers may not routinely exclude job applicants based upon their arrest records. However, when it appears as though the applicant actually engaged in the conduct for which he or she was arrested, and that the conduct was job related and relatively recent, the exclusion is justified. In these circumstances, the EEOC requires the employer to allow the person to explain the circumstances underlying the arrest before disqualifying him or her from employment.

**There are an increasing number of professions with bars affecting people with criminal records.**

Some employers are forbidden from hiring people with criminal records for certain jobs and are mandated to perform background checks before hiring a job applicant. The types of jobs with legal bars against people with criminal records tend to be in the fields of childcare, education, and healthcare. Depending on the state law, the statute could provide for the individual to obtain a waiver or demonstrate evidence of rehabilitation to remove the conviction bar.

**Most employers who hire people with criminal records do not face a risk of negligent hiring.**

In most cases an employer will not face legal liability if s/he hires a person with a criminal record. While state standards differ, the important element in determining whether an employer is liable is foreseeability. Specifically, it involves the question of whether the employee had a history or propensity for harmful behavior, and most importantly, whether the employer knew or should have known of the employee's propensities. Generally, an employer's reasonable efforts to check and consider a prospective employee's background will satisfy the legal requirements and eliminate the risk of liability on the employer's part.