

Statutory Employment Barriers: Selected Bibliography

Prepared by Miriam Aukerman
Legal Aid of Western Michigan

Cases Under U.S. Constitution and State Law

- Baer v. City of Wauwatosa*, 716 F.2d 1117, 1125 (1983) (holding that city had improperly denied a gunshop owner's license to an individual who had been convicted of sexual assault).
- Barsky v. Board of Regents*, 347 U.S. 442 (1954) (holding that a physician's license could be suspended because of a conviction, but emphasizing the due process protections available prior to suspension).
- Brandt v. Fox*, 153 Cal. Rptr. 683 (Cal. Ct. App. 1979) (reversing the denial of a real estate license because the plaintiff's four-year-old cocaine distribution conviction was not substantially related to the business of selling real estate).
- Brewer v. Department of Motor Vehicles*, 93 Cal. App. 3d 358 (Cal. Ct. App. 1979) (reversing the denial of a license to sell vehicles based on a criminal record).
- Butts v. Nichols*, 381 F. Supp. 573 (S.D. Iowa) (holding that prohibiting convicted felons from occupying state civil service positions violated the equal protection clause).
- Cronin v. O'Leary*, 13 Mass. L. Rep. 405 (Mass. Super. Ct. 2001) (striking down ban on employment with state department of human services as a violation of procedural due process).
- Darks v. City of Cincinnati*, 745 F.2d 1040 (6th Cir. 1984) (upholding a blanket policy of denying licenses to operate dance halls to individuals convicted of felonies).
- DeVeau v. Braisted*, 363 U.S. 144 (1960) (upholding a statute which prohibited waterfront unions from collecting dues if any agent or official of the union had a felony conviction).
- Dixon v. McMullen*, 527 F.Supp. 711 (N.D. Tex. 1981) (upholding refusal to certify pardoned felon as police officer because his conviction for robbery would directly reflect on his qualifications for the job of investigating robberies).
- Fernandes v. Limmer*, 663 F.2d 619, 630 (5th Cir. 1981) (striking down a regulation prohibiting persons convicted of felonies from distributing literature or collecting funds at an airport).
- Flanagan v. Town of Petersburg*, 150 S.E. 382 (1929) (upholding denial of a pool hall license to an applicant who had been convicted of assault and battery).

Furst v. New York City Transit Authority, 631 F. Supp. 1331 (E.D.N.Y. 1986) (striking down Transit Authority policy that required the discharge of individuals convicted of felonies because it violated the equal protection clause).

FW/PBS, Inc. v. Dallas, 837 F.2d 1298, 1305 (5th Cir. 1988) (upholding a prohibition on the operation of sexually oriented businesses by those convicted of sex crimes).

Hill v. City of Chester, 1994 U.S. Dist. LEXIS 11951 *19 (E.D. Penn., Aug. 26, 1994) (upholding decision of city council to eliminate position of an employee based on his criminal record).

Hill v. Gill, 703 F. Supp. 1034, 1037 (D.R.I. 1989) (upholding regulations prohibiting persons convicted of felonies from being licensed as school bus drivers).

In Re Manville, 538 A.2d 1128, 1132 n.3 (D.C. Ct. App. 1988) (questioning whether a *per se* rule excluding persons with felony convictions from bar admission was unconstitutionally overinclusive and not sufficiently related to legitimate state interests, but ultimately rejecting the rule on policy rather than constitutional grounds).

James v. Strange, 407 U.S. 128 (1972) (holding that a Kansas recoupment statute which treated indigent criminal defendants differently from other civil judgment debtors was irrational and therefore violated equal protection).

Kindem v. City of Alameda, 502 F. Supp. 1108, 1111 (N.D. Cal. 1980) (invalidating city's blanket ban on hiring persons with felony convictions).

Lewis v. Alabama Dep't Pub. Safety, 831 F. Supp. 824, 827 (M.D. Ala. 1993) (finding that a regulation excluding those convicted of a crime of force, violence, or moral turpitude from the state's list of towing contractors was "totally irrational").

Lopez v. McMahan, 205 Cal. App. 3d 1510 (1988) (upholding refusal to issue daycare license to an applicant residing with an individual convicted of a violent felony).

M&Z Cab Corp. v. City of Chicago, 8 F. Supp. 2d 941, 947 (D. Ill. 1998) (upholding revocation of taxicab medallions based on the holder's felony conviction).

Miller v. Carter, 547 F.2d 1314 (7th Cir. 1977), *affirmed Carter v. Miller*, 434 U.S. 356 (1978) (equally divided court) (striking down ordinance that permanently barred persons convicted of certain offenses from obtaining a public chauffeur's license).

Muhammad Ali v. Division of State Athletic Comm'n, 308 F. Supp. 11, 17 (S.D.N.Y. 1969) (holding that Athletic Commission could make a felony conviction grounds for refusing, suspending, or revoking a boxing license).

Newland v. Board of Governors, 566 P.2d 254 (1977) (reversing the denial of teaching credentials to individuals convicted of misdemeanors).

- Nixon v. Department of Public Welfare*, 839 A.2d 277, 288 (2003) (finding that statute that prohibited employment in elder care facilities for those convicted of certain criminal offenses did not have a real and substantial relationship to Commonwealth's interest in protecting elderly individuals).
- People v. Lindner*, 535 N.E.2d 829 (Ill. 1989) (finding that revocation of a sex offender's driver's license bore no rational relationship to safe driving).
- Pieri v. Fox*, 96 Cal. App. 3d 802 (Cal. Ct. App. 1979) (holding that the denial of a real estate broker's license was impermissible in absence of evidence that the applicant's past crime of making false statements was rationally and substantially related to her present qualifications).
- Pordum v. Board of Regents*, 491 F.2d 1281 (2d Cir. 1974) (holding that exclusion of convicted persons from a profession can be justified only after a detailed and particularistic consideration of the relationship between the person involved and the purpose of exclusion).
- Quarrels v. Brown*, 871 F.2d 1088 (6th Cir. 1989) (unpublished opinion) (upholding denial of correctional officer position to individual with a criminal record).
- Schanuel v. Anderson*, 708 F.2d 315, 319 (7th Cir. 1983) (upholding a statute prohibiting employment of persons convicted of felonies as security guards for a ten-year period).
- Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232 (1957) (holding that individual's arrest record could not be used to prevent his admission to the bar).
- Seasholtz v. West Virginia Bd. of Osteopathy*, 526 F.2d 590 (4th Cir. 1975) (holding that osteopath's license could be revoked for a prior conviction for fraud committed while practicing as an osteopath because that conviction was rationally connected with a determination of the fitness and capacity of the osteopath to practice his profession).
- Skinner v. Oklahoma*, 316 U.S. 535 (1942) (applying equal protection and due process analysis to strike down statute that required the involuntary sterilization of some offenders, but not of others convicted of similar crimes).
- Smith v. Fussenich*, 440 F. Supp. 1077 (D. Conn. 1977) (striking down record-based bar to private detective and security guard work).
- Upshaw v. McNamara*, 435 F.2d 1188, 1190 (1st Cir. 1970) (holding that a person convicted of a felony and subsequently pardoned could still be disqualified from serving as a police officer).
- Weissinger v. Ward*, 704 F. Supp. 349 (E.D.N.Y. 1989) (upholding the discharge of a police officer convicted of criminal facilitation for completing false accident reports).

Title VII: Policy Statements and Cases

Policy Statement on the Issue of Criminal Records Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* (1982) (Feb. 4, 1987), in II EEOC Compliance Manual § 604 (explaining that because a policy denying employment based on criminal records has a disparate impact on African-Americans and Hispanics, such a policy would violate Title VII).

Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* (1982) (Feb. 4, 1987), in II EEOC Compliance Manual § 604 (explaining that because a policy denying employment based on arrest records has a disparate impact on African-Americans and Hispanics, such a policy would violate Title VII).

Policy Statement on the Use of Statistics in Charges Involving the Exclusion of Individuals with Conviction Records from Employment (July 29, 1987), in II EEOC Compliance Manual App. § 604-B (explaining how statistics should be used to prove disparate impact in cases involve record-based restrictions).

Carter v. Gallagher, 452 F.2d 315, 326 (8th Cir. 1971) (Title VII case holding that conviction record may not be an absolute bar to employment as a firefighter).

Dozier v. Chupka, 395 F. Supp. 836, 850 (S.D. Ohio 1975) (consideration of prior arrests and convictions in hiring of firefighter had a disparate impact on African-Americans).

EEOC v. Carolina Freight Carriers Corp., 723 F. Supp. 734 (D. Fla. 1989) (employer policy not to hire persons with felony, theft, or larceny conviction did not have a disparate impact on Hispanics).

Green v. Missouri Pac. R.R. Co., 523 F.2d 1290 (8th Cir. 1975) (holding that railroad's policy of refusing employment to persons with criminal convictions violated Title VII because it had a disparate impact on racial minorities and was not justified by business necessity).

Gregory v. Litton Sys., Inc., 316 F. Supp. 401, 403 (C.D. Cal. 1970), *modified on other grounds*, 472 F. 2d 631 (9th Cir. 1972) (holding that a policy of denying employment to persons who had been arrested was unlawful under Title VII because it disproportionately affected African-American applicants and was not justified by business necessity).

Lewis v. Alabama Dept. of Public Safety, 831 F.Supp. 824 (M.D. Ala. 1993) (dismissal of Title VII case on plaintiff's inadequate statistical showing).

Matthews v. Runyon, 860 F. Supp. 1347 (E.D. Wis. 1994) (summary judgment against plaintiff for failing to establish a prima facie Title VII case).

Moses v. Browning-Ferris Industries of Kansas City, No. 84-2334-S (D. Kan. Sept. 22, 1986) (finding for defendant after trial on grounds that policy of rejecting applicants for position of garbage collector who were convicted of crimes involving moral turpitude was justified by business necessity).

Richardson v. Hotel Corporation of America, 332 F. Supp. 519 (E.D. La. 1971), *aff'd mem.*, 468 F.2d 951 (5th Cir. 1972) (dismissing Title VII case brought by bellman who was discharged for prior theft conviction and finding that hotel had a legitimate business need to restrict security-sensitive positions to individuals who had not committed serious crimes).

Williams v. Carson Pirie Scott, 1992 U.S. Dist. LEXIS 13643 (N.D. Ill. Sept. 9, 1992) (finding that defendant established business necessity).

Secondary Materials

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Stephen Befort, *Pre-Employment Screening and Investigation: Navigating Between a Rock and Hard Place*, 14 HOFSTRA L.J. 365, 376 (1997).

Gabriel Chin, *Are Collateral Sanctions Premised on Conduct or Conviction: The Case of Abortion Doctors*, 30 FORDHAM URBAN L.J. 1685 (2003).

Gabriel Chin, *Race, the War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. OF GENDER, RACE, & JUSTICE 253 (2002).

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- Jennifer Leavitt, Note, *Walking a Tightrope: Balancing Competing Public Interests in the Employment of Criminal Offenders*, 34 CONN. L. REV. 1281, 1301 (2002)
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