



## Center for Nonprofit Excellence

### Best Practices for Employers – EEOC Guidelines

The Equal Employment Opportunity Commission (EEOC) provides the following 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 of the Civil Rights Act of 1964 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.
- Identify the criminal offenses based on all available evidence.
- Determine the duration of exclusions for criminal conduct based on all available evidence.
- Include an individualized assessment (see description below).
- 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.

#### *Confidentiality*

Keep information about applicants' and employees' criminal records confidential. Only use it for the purpose for which it was intended.



## Center for Nonprofit Excellence

### Appropriate Considerations for Individualized Assessment

The EEOC, in its Enforcement Guidance on the Use of Arrest and Conviction Records in Employment Decisions, identifies the following factors as among the appropriate considerations when an employer undertakes an individualized assessment of whether an applicant (or an incumbent employee) has a record of rehabilitation that shows that the risk the person will commit acts harmful to the employer's customers, clients, or workforce is negligible:

- The facts or circumstances surrounding the offense or conduct: for example, when an offender received a purely probationary sentence with no prison time for a felony conviction, that is a common indication that the offense was not as serious as the "felony" classification would typically indicate;
- The number of offenses for which the individual was convicted;
- Older age at the time of conviction, or release from prison: studies indicate that people who commit offenses when they are older, and are older at the time of release from prison or completion of sentence, are less likely to re-offend;
- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before the offense or conduct;
- The length and consistency of employment history after the offense or conduct;
- Rehabilitation efforts after the offense, e.g., education/training;
- References from former employers, particularly from post-offense employment;
- Character references and any other information regarding fitness for the particular position; and,
- Whether the individual, since the latest offense, has been bonded under a federal, state, or local bonding program.

Other factors not specifically listed by the EEOC, but relevant to many persons with a criminal conviction:

- Parole release obtained after serving only a short period in detention for a felony conviction, with no record of any subsequent offenses;
- Establishment of stable family, united with spouse or partner and, if relevant, children
- Other evidence of family responsibility, such as caring for dependent relatives; and,



## Center for Nonprofit Excellence

- Rehabilitation after the offense, such as continuing participation in 12-step programs, succeeding in making a former substance abuser clean and sober.

For more information, see: [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)