

New EEOC Guidelines on Criminal Background Checks

What your business should know about performing criminal background checks.

Can employers disqualify a prospective employee on the ground that he or she has a criminal record?

Federal civil rights laws prevent employers from denying employment on the basis of a past conviction, unless the offense is viewed as job-related. This rule allows employers to consider convictions to the extent that they are relevant to the work the employee would undertake, and allows employers to ensure safety on the job. But, the U.S. Equal Employment Opportunity Commission (EEOC) prohibits employers from adopting policies which categorically reject prospective employees with past convictions.

Can employers ask employees about past convictions?

Employers may conduct background checks, and may ask prospective employees about their criminal history; however, the EEOC requires employers to consider all of the facts. The new guidelines require that a prospective employee must be given a chance to explain a past arrest or conviction before the employer may reject an applicant.

To what extent can employers consider past arrests?

The EEOC discourages employers from denying employment on the ground that a prospective employee has been arrested because an arrest does not indicate that criminal conduct has occurred. That said, employers may nonetheless ask about, and consider, the conduct underlying the arrest to the extent it has bearing on the individual's capacity to perform a job.

Can employers screen applicants on the basis of convictions?

To the extent an employer wishes to develop a policy to screen out applicants with criminal backgrounds, the EEOC requires that the policy must be carefully tailored. Employers are cautioned to take a holistic view when considering past infractions. EEOC requires employers to consider all available facts shedding light on the nature of the conviction or arrest, the specific job duties, and the time passed since the conviction. EEOC further recommends that employers should give prospective employees, who will otherwise be denied a position on the basis of their past criminal conduct, the opportunity to submit information explaining why they should not be rejected.

What else should employers keep in mind?

Employers should ensure that all information about applicants' and employees' criminal records is kept confidential. It is also prudent to consult an attorney before establishing a policy or procedure for screening out prospective employees with criminal backgrounds.

Additional Questions?

You can [download the EEOC's "Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964."](#) The agency also developed a [Q&A document](#) to provide employers with additional compliance information.

NFIB members can also call the [NFIB Employment Hotline at \(866\) 678-NFIB \(6342\)](#).

This NFIB alert does not constitute legal advice, and you should consider consulting an attorney about any laws and regulations that are applicable in your state, locality or particular type of business.

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