

Gavel to Gavel: Screening guidelines

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Nearly every employer conducts some form of pre-employment screening on job applicants, including criminal background checks, a practice now under heavy government fire for possible disparate effect on minorities.

Arrest records are unreliable indicators of guilt and should be treated differently from conviction records when screening job applicants, according to the Equal Employment Opportunity Commission. In an informal discussion letter responding to the Peace Corps' request for comment on its proposed volunteer application, the EEOC enumerated its position on employer use of criminal arrest and conviction records in the hiring process.

At issue were the multiple questions on the volunteer application about criminal history, including arrests and convictions. While recognizing that the Peace Corps has an interest in selecting employees who won't pose an unacceptable risk to the communities it serves and that pre-employment inquiries alone aren't Title VII violations, the EEOC frowned on the Peace Corps' policies and applicant questions. It asserted they could have a disparate effect if applied differently to minority applicants.

If there is a disparate effect, the employer may use the information only if the criminal conduct is sufficiently recent and job-related to be predictive of the applicant's performance in the sought position, given its duties and responsibilities. Even then, the applicant must be given a reasonable opportunity to dispute the validity of the records,

to ensure the information is accurate.

The EEOC's bottom-line recommendation to the Peace Corps was to re-evaluate and narrow its policies and tailor applicant questions to the duties pertinent to the position for which the applicant is applying. It also recommended limiting inquiries to the prior seven-year period.

So, what's the message to employers?

Each applicant's criminal history must be analyzed on a case-by-case basis. Job descriptions are extremely important to this consideration process, because the criminal behavior must correlate to a duty or responsibility of the position the applicant seeks. Examine job duties to ensure the background information you gather and use in the application process is relevant to the position. Mark my words: The EEOC will require empirical evidence.

I strongly suggest that employers re-evaluate all hiring-related policies and practices such as job applications, interview guidelines, job descriptions and applicant questions using the EEOC's informal discussion letter at www.eeoc.gov as a guide.

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