
Workers with a Criminal Record: Employee Rights, Employer Responsibilities & Fair Hiring

Transforming Communities: Strategies to Create Jobs and
Restore Opportunities
June 2, 2011

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Overview

- The Issue
- Employee Rights & Employer Responsibilities
 - Title VII
 - Fair Credit Reporting Act (FCRA)
- Fair Hiring Policies
 - Current State Laws
 - Best Practices

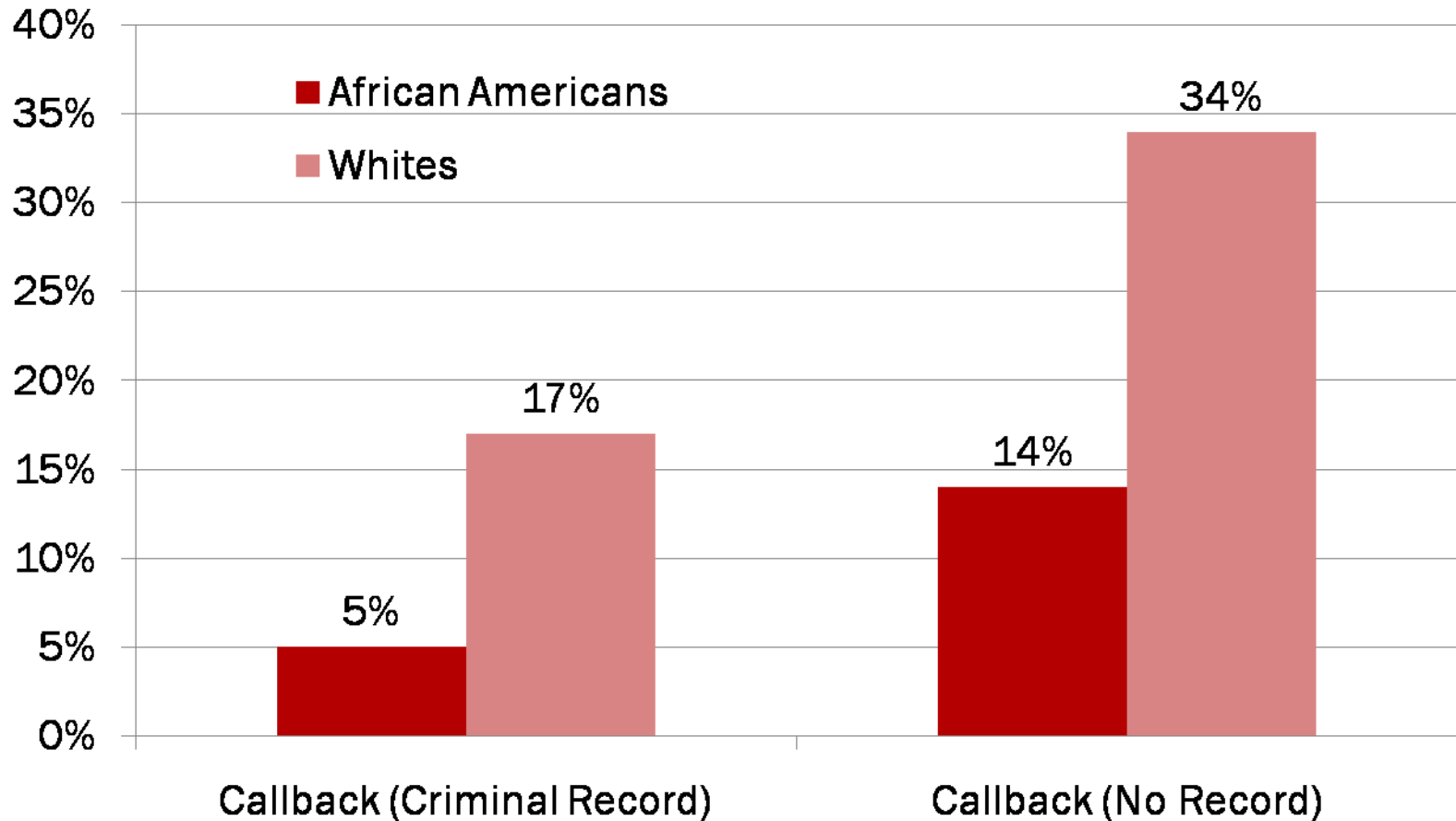
Workers with a Criminal Record are Shut Out of Jobs

- Over one in four U.S. adults has a criminal record
- Recent SHRM study found that 92% of members perform background checks on job candidates
- Serious limits on reliability of private background checks and FBI rap sheets
- Racial impact of having a criminal record on job search
- NELP report documents widespread, illegal blanket bans against people with criminal records



Sixty-five million U.S. adults, over one in four adults, have a criminal record.

Employment Testing Survey Documents Impact of a Criminal Record on Interview Callbacks, by Race (Devah Pager, "The Mark of a Criminal Record," American Journal of Sociology (March 2003))



Denying Employment Because of Criminal History Has a **Disparate Impact**

- “Disparate impact” is presumed when employers bar people with convictions:

“[A]n employer’s policy or practice of excluding individuals from employment on the basis of their conviction records has an adverse impact on [African American and Latino workers] in light of statistics showing that they are convicted at a disproportionately higher rate than their representation in the population.”

(EEOC Policy Statement on the Issue of Conviction Records (issued 2/4/87))

- Absolute bars based on convictions are unlawful:

“[W]here there is evidence of adverse impact, an absolute bar to employment based on the mere fact that an individual has a conviction record is unlawful under Title VII.”

(Id.)

Electrician job from Atlanta, Georgia Craigslist.org

Electrical Contractor with reliable truck and tools (Atlanta, GA)

[prohibited](#)
[spam/overpost](#)
[best of craigslist](#)

Date: 2010-09-29, 11:35AM EDT

Reply to: job-m8fuh-1979727998@craigslist.org [\[Errors when replying to ads?\]](#)

Omni Energy LLC is seeking experienced electrician with reliable truck and tools for contract work.

- Experience preferred
- Reliable transportation required

Please do not apply if you do not meet the below requirements.

Background Requirements

- * No arrests or convictions of any kind for the past seven years
- * No Felony arrests or convictions of any kind for life
- * Traffic Violations will be looked at and will not exclude the candidate provided they are standard (No DUI, Evading, or felony traffic violation)
- * No Federal or State back taxes owed
- * Current on all personal finances (no current defaults or collections)

Employers Must Consider Conviction on a Case-by-Case Basis

Employers may consider criminal records in employment decisions when the conviction is **job related** and consistent with “**business necessity.**”

Employers must consider:

1. The **nature and gravity of the conviction**;
2. The **nature of the job** held or sought; and
3. The **time that has passed** since the conviction and/or completion of the sentence.



<http://www.eeoc.gov/policy/docs/convict1.html>

Enforcing Title VII

- Criminal Background Checks: A Best Practices Guide

<http://www.nelp.org/page/-/SCLP/2011/CriminalBackgroundChecksBestPracticesGuide.pdf?nocdn=1>

- Information on Filing a Charge of Discrimination with the EEOC

<http://www.nelp.org/page/-/SCLP/FilingDiscriminationClaimwithEEOC.pdf?nocdn=1>

- How Does the EEOC Handle Discrimination Charges?

<http://www.nelp.org/page/-/SCLP/HowEEOCHandlesDiscriminationClaims.pdf?nocdn=1>

- U.S. Equal Employment Opportunity Commission

- (800) 669-4000
- www.eeoc.gov

Fair Credit Reporting Act

- **Notice and Authorization Required**: The employer requesting the report must provide clear written notice and obtain written authorization from the job applicant. (15 U.S.C. § 1681b(b)(2)(A))
- **“Adverse Action” Procedures Required**: If the employer plans to take an “adverse action” (not hiring, firing) based on the report, the employer must provide the applicant with a copy of the report and of the FTC Summary of Rights before the action is taken. (15 U.S.C. § 1681b(b)(3), 1681m(a))

Ban the Box & Fair Hiring Policies

Fair Hiring Policies: A “Win-Win” Proposition for Employers

- **Fairer opportunities for workers means maximizing the applicant pool for employers.** In Minneapolis, nearly 60% of applicants with a potentially disqualifying record were hired with new policy, compared to 5.7% under prior policy.
- **Reduces resource expenditure.** In Minneapolis, considering an applicant’s criminal history after a conditional offer of employment reduced resources devoted to employment screening by 28%.

New State “Ban the Box” Protections

State	“Ban the Box” Coverage	Screening Criteria	Other Protections
California (2010), Executive Policy	Public Employment		
Connecticut (2010), HB 5207	Public Employment/Licensing Boards (checked at conditional offer of employment)	Must consider nature of offense and relationship to job, rehabilitation, age of offense	Written statement of reasons for rejection.
Hawaii (1998), HRS Sections 378-2, 378.2.5	<u>Private</u> and Public Employment (checked at conditional offer of employment)	Criminal record must bear a “rational relationship” to the job	Employers may not consider felonies over <u>10 years</u> (excluding periods of incarceration)
Massachusetts (2010) Chap 256 of Acts 2010	<u>Private</u> and Public Employment (checked when finalists selected)		Employers may not consider felonies over <u>10 years</u> and misdemeanors over <u>5 years</u>
Minnesota (2009) Minn.Stat., Section 364, et seq.	Public Employment (checked when selected for interview)	Requires convictions to be “job related” for public employment and licensing purposes, and must consider rehabilitation	Cannot consider arrest that did not lead to conviction, expunged offenses and misdemeanors not involving jail time
New Mexico (2010) N.M. Stat. Section 28-2-3	Public Employment (checked when finalists selected)	Conviction must be “substantially related” to the job	

Key Components & Models

- Evaluate hiring policies & adopt federal Title VII standards. (*Chicago*)
- Limit background checks to sensitive positions. (*Boston, Austin*)
- Inquiry only after conditional offer. (*Worcester*)
- Include notice on job application that conviction will not bar consideration. (*Jacksonville – “encouraged to apply”*)
- Provide applicant with copy of background report. (*Memphis – highlight conviction*)
- Allow applicant time to correct information. (*Cincinnati*)
- Only consider job-related convictions. (*Hartford*)

Key Components & Models

- Consider rehabilitation, public policy to hire people with convictions. (*New Haven*)
- If conviction is job related, allow for appeal. (*Bridgeport*)
- Confidentiality. (*Baltimore – discards criminal history information*)
- Enforcement: complaints, auditing, data collection. (*Worcester*)
- Extend policies to vendors. (*Boston, Cambridge, Worcester, New Haven, Hartford*)
- Extend policies to private employers. (*Philadelphia*)