

National Employment Law Project

Christine L. Owens
Executive Director

National Office
75 Maiden Lane, Suite 601
New York, NY 10038
(212) 285-3025 tel
(212) 285-3044 fax
nelp@nelp.org
www.nelp.org

Washington, DC Office
1333 H Street, NW
Suite 300, East Tower
Washington, DC 20005
(202)-533-2585 tel
(202) 775-0819 fax

California Office
405 14th Street, Suite 1400
Oakland, CA 94612
(510) 663-5700 tel
(510) 663-2028 fax

Midwest Office
900 Victors Way, Suite 350
Ann Arbor, MI 48108
(734) 369-5616 tel
(866) 373-8994 fax

West Coast Office
407 Adams Street SE, Suite 203
Olympia, WA 98501
(360) 534-9160 tel
(866) 882-5467 fax

Board of Directors

Beth Shulman, Chair
Author and Consultant

Elaise L. Fox
UFCW Local 1657

James Haughton
Director, Fight Back

Jonathan Hiatt,
General Counsel, AFL-CIO

Paul Igasaki
Consultant

Lucille Logan
Community Activist

Walter Meginniss
Gladstein, Reif & Meginniss

James Sessions
*East Tennessee Interfaith
Coalition for Worker Justice*

Michael Shen
Shen & Associates, P.C.

Dr. William E. Spriggs
Howard University

Thomas Weeks
*Director
Ohio State Legal Services Assoc.*

Cathy Wilkinson
Low-Wage Worker Activist

June 9, 2009

Acting Chairman Stuart J. Ishimaru
U.S. Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

Dear Chairman Ishimaru:

The undersigned organizations, which represent or have membership that includes minority persons with arrest or conviction histories, urge you to issue a Commissioner's Charge against Bank of America, Manpower, and the Alameda, California One-Stop Career Center ("respondents"), pursuant to Section 706(b) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(b). A Commissioner's Charge will permit the Equal Employment Opportunity Commission ("EEOC") to determine whether respondents' use of an absolute bar to employment for individuals with criminal records violates Title VII of the Civil Rights Act of 1964 and EEOC guidance,¹ because such policies have an unjustified adverse impact on minority applicants for employment.

Blanket prohibitions that exclude any individual with a prior criminal record from employment disproportionately deprive African Americans and Latinos of employment opportunities for which they are otherwise qualified. Because of their disparate impact, hiring restrictions based on arrest or conviction records are only permissible when justified by business necessity, a standard that simply cannot be met for overly-broad exclusions that do not take into account the nature, age and job-relatedness of the offense. Issuance of a Commissioner's Charge will permit an investigation into whether one of the nation's largest employers and staffing agencies and a state office have violated Title VII, and it will focus much-needed attention on a widespread, illegal employment practice engaged in by more and more employers and affecting growing numbers of workers.

¹ EEOC "Policy Statement on the Issue of Conviction Records Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e *et. seq.* (1982)" (Feb. 4, 1987), available at <http://eeoc.gov/policy/docs/convict1.html>; EEOC "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)" (Sept. 7, 1990), available at http://eeoc.gov/policy/docs/arrest_records.html.

Facts

Respondents widely posted a job announcement for clerical positions at Bank of America that includes an absolute prohibition on hiring any applicant with a felony or misdemeanor. A copy of one announcement is attached hereto as Exhibit A. The job announcement states: "Qualified candidates must be able to pass: Background Check (no felonies or misdemeanors)" The announcement did not distinguish between arrests or convictions, and can certainly be read as applying to both arrests and convictions.

Respondents distributed the job announcement throughout the San Francisco Bay Area in the first weeks of March 2009. It applies to over 600 positions for three categories of workers, including data entry operators, clerical workers, and proof operators who generally record and process customer transactions. Based on the racial disparities in the criminal justice system recognized in the EEOC's guidance, African Americans and Latinos were disproportionately denied employment for these largely clerical positions with Bank of America because of the blanket requirement that applicants' records include "no felonies or misdemeanors" of any kind, gravity or age. Moreover, the chilling effect of such an unlawful posting is enormous, and discouraged otherwise qualified applicants with prior felony or misdemeanor convictions, and possibly arrests only, from applying.

Reasons To Issue A Commissioner's Charge

As you know, the EEOC has recognized for decades that because "nationally, Blacks and Hispanics are convicted in numbers which are disproportionate to Whites . . . barring people from employment based on their conviction records will therefore disproportionately exclude those groups."² In its most recent statement on this issue, the EEOC further recognized that "since the use of arrest records as an absolute bar to employment has a disparate impact on some protected groups, such records alone cannot be used to routinely exclude persons from employment."³ Thus, the EEOC requires employers to have a "business necessity" for excluding workers due to their criminal records, and has held that "an absolute bar to employment based on the mere fact that an individual has a conviction [or arrest] record is unlawful under Title VII."⁴

² EEOC "Policy Guidance on the Consideration of Arrest Records in Employment Decisions under Title VII of the Civil Rights Act of 1964" (citing EEOC "Policy Statement on the Issue of Conviction Records Under Title VII of the Civil Rights Act of 1964").

³ *Id.*

⁴ EEOC "Policy Statement on the Issue of Conviction Records Under Title VII of the Civil Rights Act of 1964."

Commissioner's Charge Request

June 9, 2009

Page Three

Unfortunately, despite the EEOC's guidance barring absolute exclusion from employment based on any arrest and conviction history, far too many employers, staffing agencies, and workforce development organizations are unaware of or fail to comply with this guidance. As evidenced by the job announcement in this situation, one of the nation's largest banks (Bank of America), one of the world's largest staffing agencies (Manpower), and a state office charged with helping individuals obtain employment (One-Stop Career Center) conspicuously failed to comply with the EEOC's guidance regulating criminal background checks for employment.

We recognize that the Federal Deposit Insurance Act (FDIA) disqualifies individuals with some criminal convictions from working in banking institutions.⁵ However, the Federal Deposit Insurance Corporation (FDIC) restrictions are not nearly as sweeping as those imposed by respondents' job announcement, which appears to prohibit the hiring of anyone with any felony or misdemeanor arrest or conviction.⁶ Respondents went far beyond the limitations otherwise envisioned under the federal law that was crafted to specifically address the needs of the banking industry by excluding applicants regardless of when the offense occurred, the nature of the offense, and whether it fell within any FDIC restrictions.

We believe that this across-the-board exclusion of any individual with felony or misdemeanor conviction or arrest history not only violates Title VII, but unfortunately exemplifies the illegal hiring policies utilized increasingly by many large and small employers and staffing agencies. Given both the significant increase in arrest and incarceration rates since the EEOC issued its conviction guidance in the mid-1980s and employers' growing reliance on arrest and conviction records to screen applicants for employment, the unlawful denial of employment opportunities will only multiply absent Commission intervention to end these acts and ensure that employers comply with the agency's guidance. When some of the nation's largest employers with the most sophisticated human resources departments engage in such blatantly discriminatory practices, it perpetrates the widely-held belief that it is perfectly legal to exclude individuals with criminal records from any hiring consideration.

⁵ 12 U.S.C. § 1829.

⁶ The FDIC rules pertain only to convictions (not arrests), and apply only to some types of crimes. Specifically, the FDIA's disqualifications are for any "criminal offense involving dishonesty or a breach of trust, or money laundering . . ." 12 U.S.C. § 1829(a)(1). Moreover, in some instances, the disqualifications can be lifted with written approval of the FDIC upon a showing that the individual is "fit to participate in the conduct of the affairs of an insured institution without posing a risk to its safety and soundness or impairing public confidence in that institution." FDIC Statement of Policy for Section 19 of the FDI Act, 63 Fed. Reg. 66185 (Dec. 1, 1998), available at <http://www.fdic.gov/regulations/laws/rules/5000-1300.html>. In addition, certain "*de minimus*" misdemeanor offenses are exempt altogether. *Id.* at 66184.

Commissioner's Charge Request

June 9, 2009

Page Four

Therefore, we respectfully ask that you file a Commissioner's Charge against respondents Bank of America, Manpower, and the Alameda One-Stop Career Center, and that the Commission conduct a full investigation, and, if appropriate, issue a cause finding. We further urge the Commission to seek the full relief available under Title VII, including injunctive relief requiring these entities to cease their illegal practices and adopt criminal record screening policies that comply with the EEOC's guidance, as well as monetary relief for any persons deprived of employment opportunities because of the unlawful screening and hiring practices.

Very truly yours,

All of Us or None

American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)

A New Way of Life Reentry Project

Community Legal Services of Philadelphia

East Bay Community Law Center

Golden Gate University Law School Women's Employment Rights Clinic

Impact Fund

Leadership Conference for Civil Rights Employment Task Force

Legal Action Center

Legal Momentum

Legal Services for Prisoners with Children

National Employment Law Project

National Employment Lawyers Association

National H.I.R.E. Network

National Partnership for Women and Families

Exhibit A



Manpower is Hiring



**Wednesday
April 1st, 2009
11am**

Are you looking for a fun job in Hayward, CA?
Manpower offer's a great seasonal opportunity @
Bank of America LocBox Project!

Over 600 people are needed to fill:

- Data Entry Operator positions
- Proof Operators
- General Clerical

Qualified candidates must be able to pass:

- Background Check (no felonies or misdemeanors)
- Reference Check
- FBI Fingerprint Search

ALAMEDA ONE STOP CAREER CENTER
College of Alameda
Portable P (West Campus Dr.)
555 Ralph Appezato Memorial Parkway
Alameda, CA 94501