

CAN I BE REFUSED EMPLOYMENT BECAUSE OF A CONVICTION?

TITLE VII: Discrimination based on race or national origin is illegal under the Civil Rights Act of 1964. Therefore, if a hiring practice affects people of a certain race more than others, the employer must prove the policy is a 'business necessity.' This means that because people of color are over-represented in the criminal justice system, a hiring policy that excludes people with convictions could have an unequal impact on people of color, thereby violating the law. Concerned about this possibility, the Equal Employment Opportunity Commission (EEOC), a federal government agency that helps enforce civil rights laws, issued guidelines that say an employer cannot refuse to hire a person based on their conviction history unless his/her conviction(s) are related to the job. Employers are required to consider the nature of the job, the nature and seriousness of the offense, and the length of time since the conviction and/or incarceration in making a determination about an applicant. Employers should not adopt blanket policies that exclude people with criminal records. Also, under California law, employers are not permitted to inquire about arrests, nor are you required to list them on most job applications.

DISABILITY: A number of federal and state laws, such as Americans with Disabilities Act (ADA) and California Fair Employment and Housing Act (FEHA), prohibit employers from discriminating against people recovering from drug addiction, because the law classifies drug addiction as a form of disability that requires reasonable accommodation from employers. During the interview process, the employer should refrain from asking an applicant intrusive questions about past drug use.



Source: Legal Action Center report, at http://hirenetwork.org/pdfs/050542_ca_disc.pdf

FOR MORE INFORMATION CONTACT:
A New Way Of Life Reentry Project
www.anewwayoflife.org or 323.357.8431

DISCLAIMER

Information contained in this brochure is current as of March 2008, and is not intended as legal advice. Please consult with an attorney before taking any action based on this brochure.



REENTRY & EMPLOYMENT

FACTS FOR JOB SEEKERS WITH PRIOR CONVICTIONS



WHY SHOULD I BE CONSIDERED FOR HIRE AS SOMEONE WITH A CRIMINAL CONVICTION?

With the nation's largest reentry population, Los Angeles has a vital interest in eliminating barriers for people who are trying to get their lives back on track. Studies have shown that people with prior convictions who are employed are three times more likely to avoid criminal activity and that after five years, people with prior convictions are no more likely to be arrested than those without convictions. By securing employment, you have a better chance of achieving successful reentry and thereby enhancing public safety. This benefits not only you, but your employer and the community at large.

ARE THERE ANY FINANCIAL BENEFITS FOR MY EMPLOYER?

WORK OPPORTUNITY TAX CREDIT (WOTC): People with convictions who are hired within one year after release from prison and/or people in state-approved rehabilitation programs may be eligible for the Work Opportunity Tax Credit (WOTC). The WOTC reduces employers' federal income tax liability by up to \$2,400 per qualified new worker. The credit is generally available for the first year of employment, but there is no limit to how many WOTC workers an employer can claim. Have your employer check to see if you are a qualified worker.

Source: California EDD
(<http://www.edd.ca.gov/wotcind.htm>)

ENTERPRISE ZONE TAX CREDITS (EZTC): Instead of the Work Opportunity Tax Credit, an employer located in one of the 39 designated Enterprise Zones in California can claim up to \$31,605 credit over a five-year period for each new qualified worker. Employers should check with a tax accountant to see if they qualify.



Source: California Association of Enterprise Zones, at <http://www.caez.org>

ARE THERE LEGAL RISKS TO HIRING ME?

NEGLIGENT HIRING: When hiring someone with a prior conviction, employers sometimes worry that they may be held liable under "negligent hiring" law if an employee harms another person while on the job. However, such liability can arise only when the harm was "reasonably foreseeable" to the employer at the time of hiring an employee. Reasonably foreseeable means the employer could have predicted or expected that the employee was likely to commit a certain kind of crime related to their job. For example, the employer might be liable if they conducted a background check on an employee, found a history of armed robbery, hired that person to work one-on-one with customers at their homes, and then the employee caused harm to a customer in the process of trying to rob their home. On the other hand, if an employer hired a cashier with a history of drug use and the employee robbed customers at home after looking up their addresses from a store database, the employer would not likely be liable because such a situation would not have been reasonably foreseeable, as there was no connection between the prior convictions and the incident. In other words, unless job duties are directly related to potential employee misconduct based on specific past convictions, an employer is unlikely to be found liable in the event of employee misconduct.

Source: Legal Action Center FAQ
(http://hirenetwork.org/negligent_hiring.html)

HOW CAN MY EMPLOYER BE PROTECTED FROM LIABILITY?

The Federal Bonding Program protects private employers against "employee dishonesty," such as theft, forgery, larceny, or embezzlement of money or property. The bond covers losses up to \$5,000 at no cost to the employer. The bond does not cover liability due to poor workmanship, job injuries, or work accidents. Any at-risk job applicant is eligible for bonding services, including people with prior criminal convictions and people recovering from substance abuse. The only requirement is that federal taxes must be automatically deducted from the employees' wages. In order to receive the bond free-of-charge, the employer simply offers the applicant a job and sets a date for the individual to begin work.

Source: U.S. Department of Labor
<http://www.bonds4jobs.com>



CAN I MARK THAT I HAVE 'NEVER BEEN CONVICTED' IF I GET MY RECORD EXPUNGED?

When completing job applications for most employers, you are legally permitted to say that you have no convictions if all of your convictions have been expunged or dismissed. However, "expunged" records unfortunately are not sealed or destroyed; therefore, employers may learn about these convictions or even arrest records. Although expunged convictions and arrest records are not supposed to be considered by most employers, they may feel you have been dishonest if they find them on your record and you have marked "no" on the application. Therefore, it is up to you to decide whether to disclose an "expunged" conviction and explain that it has been dismissed, or to exercise your right not to disclose. Read the questions on the application carefully and provide only the information requested. Some employers ask only about felony convictions, and some ask only about convictions in the last seven years. If an employer rejects you because of your criminal history, you have the right to ask for a copy of the background check information they used. It is important to check these reports for accuracy and to make sure they are correctly interpreted.

When applying for jobs with public/government employers, you must disclose all your convictions, including those that have been dismissed. You must also list dismissed convictions when applying for any job that requires a government-issued license, certificate or permit, security clearance; jobs that involve work in hospitals, with children, or the elderly; or jobs that involve a government contract. Some examples of job fields that fall into this category are security, nursing, real estate; jobs at banks, post offices, airports and airlines, public transportation, city offices, schools, or day-care centers. Finally, you must disclose all past convictions when applying for state-issued occupational licenses.

When disclosing dismissed convictions on any application, be sure to indicate that the conviction has been dismissed.