

## Prepare to Enforce Your Rights

**Don't try to conceal your criminal record.**

When the employer asks if you have a criminal record, **TELL THE TRUTH**. If the employer disqualifies you for your record, he may be breaking the law. But if you lie about your record, the employer will find out, and the employer is on much stronger ground to disqualify you for lying.

**Clean up the public records of your arrest or conviction.**

If the State law allows you to expunge from public court records an old arrest, an old conviction, or both, take whatever steps you have to take to get that done. State laws vary about whether you have to tell an employer about criminal history records that have been removed from the court files currently available to the public.

Whatever the rules in your State, you will be in a better position to minimize the damage to your job search from the old criminal record once that arrest or conviction no longer appears in reports of any current search of court records available to members of the public.



## More Information

If you believe an employer discriminated against you due to your race and/or your criminal history check, call us at (888) 324-7578, or complete an intake questionnaire on the Lawyers' Committee website:

[www.lawyerscommittee.org/contact/intake](http://www.lawyerscommittee.org/contact/intake)

The Equal Employment Opportunity Commission website provides more detailed information about many of the points addressed here. For Questions and Answers about the Commission's "Enforcement Guidance on the Use of Arrest and Conviction Records in Employment Decisions," issued April 25, 2012, see:

[http://www.eeoc.gov/laws/guidance/ga\\_arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/ga_arrest_conviction.cfm)

The entire text of the Enforcement Guidance can be found here:

[http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)

The Access Campaign is a project of the



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# The Access Campaign:

**Equal Access to Jobs Now!**



*Know Your Rights*

*Job Seekers' Guide  
to Employers' Use of  
Criminal History  
Checks*



## How Common is the Practice?

Virtually all public employers and 80% of private employers check all new applicants for employment to see whether they have records of arrests or criminal convictions. Over 90% check on some applicants.

Statistics cited by the Equal Employment Opportunity Commission (EEOC) show that, among men, one in three African Americans is expected to serve some time on a criminal sentence, and one in six Hispanics, while the rate for white males will be only 1 in 17. The fact that so many employers deny ex-offenders equal consideration in hiring takes a heavy toll on minority workers, especially African Americans, and helps to keep African American unemployment at consistently twice the rate of unemployment for whites.

In April 2012, the EEOC updated the Enforcement Guidance on Consideration of Arrest and Conviction Records by employers. The Guidance analyzes clearly and comprehensively the restrictions that Title VII places on an employer's use of any employment screen that has the intent or effect of excluding minority workers disproportionately from being hired or retained by the employer. The EEOC's Guidance on this critical issue should be a major step in opening many jobs that have been closed to so many minority workers.

## What did the EEOC Guidance do?

The Guidance documented the facts that support the EEOC's policy condemning the broad use of arrest and conviction records to screen out job seekers because the practice has such a strongly adverse effect on minority workers.

The Guidance reaffirmed that, based on national statistics, the EEOC will presume in complaint investigations an employer's use of criminal history records to screen out job seekers has an adverse impact on minority workers. Workers with criminal history should not be screened out unless the criminal record is job-related and business necessity justifies exclusion (that is, there are no less restrictive means of protecting the employer's interests). Other key points in the Guidance:

- **Arrest records:** Unless the employer has reliable information about the conduct underlying an arrest, the record cannot be considered.
- **Lifetime bans:** Permanent exclusion for convicted offenders is not justified.
- **Incumbent employees:** An employee who has successfully worked for the company for many years should not be fired due to an old conviction.

## Individual Evaluation of Rehabilitation

The Guidance endorsed, for the first time, a method to show a criminal history is job-related. The method is essentially the process that has been in use by employers who purport to comply

with Title VII in screening applicants for criminal history: creating a "targeted screen" (often called a "matrix" in Human Resources) by analyzing the actual circumstances of a job, relating those requirements to categories of criminal conduct and establishing a duration since the conviction or completion of sentence. This is to identify applicants who have committed acts that could harm the employer's interest and engaged in dangerous behavior, so recently that there is a risk they will repeat those acts.

Then the employer must determine individually, for each applicant within the targeted screen, whether his behavior and job performance (particularly after the offense) show that *he* is not now in fact a risk to the employer. This analysis should take into account any explanation provided by the applicant and any other factors that tend to reduce the risk presented by the applicant, even though he has a prior conviction. These factors may include age at time of conviction, length of time since conviction or incarceration, employment history, and education since the conviction or incarceration.

