

Background Checks on New Hires

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The Equal Employment Opportunity Commission (EEOC) is now attacking employers who use background checks to make hiring decisions. In the case of *EEOC vs. Freeman Cos.*, the EEOC sued an employer who used credit histories and criminal background checks in making employment decisions. The EEOC is asking the court to force the employer to hire anyone it rejected based on credit or criminal reports – AND – give them back pay from the time they were rejected!

The policy of the EEOC is an employer who uses a “blanket” policy of not hiring any applicant who has a history of arrest or convictions violates Title VII of the Civil Rights Act because such a policy “disproportionately excludes members of certain racial and ethnic groups, unless the employer can demonstrate a business need for use of this criteria.” The EEOC takes a similar stand on credit checks.

Current federal law requires employers to have written permission from applicants to check their credit history, but legislation to further restrict employee credit checks has been introduced that would amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against employees “for the purposes of making adverse employment decisions.”

The Bottom Line:

Don't use background checks – credit or criminal – to make hiring decisions unless you can give a rational and convincing reason why the background check is needed for predicting job performance and is related to the job duties.

Example: You have a residential carpet company which employs carpet installers, warehouse forklift operators and a carpet buyer. Maybe – *maybe* – you have a rational reason to do a criminal background check on your carpet installers and reject anyone convicted of burglary (because you're sending the installers into people's homes). But you probably have no reason to do a background check on the forklift operators or carpet buyer – they don't go into people's homes and they don't handle your money. By distinguishing between positions where the background check tells you something useful for predicting job performance or is related to the job duties, and those job positions where a background check is not useful, you increase your chances of surviving a discrimination lawsuit. However, if you put everyone through it, the EEOC can say this proves you just don't want to hire anyone for any job if they have bad credit or a criminal history.

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