

Are Your Hiring Practices Fair?

A few years ago, legal advice on how to deal with criminal records in employment decisions boiled down to telling employers that they cannot ask about arrest records, but it was OK to ask about convictions. Since then, the EEOC has raised the bar in its focus on this area. In particular, the EEOC will be looking at the “treatment” or “impact” of inquiries on both arrests and convictions, said David E. Smith, Ph.D., president and CEO of E·A·S·I·Consult®.

For background on this topic, Smith referenced the [Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964](#) as amended, 42 U.S.C. § 2000e. Issued by the U.S. Equal Employment Opportunity Commission (EEOC) on April 25, 2012, this publication is intended to provide employers with clarity on how the EEOC plans to enforce actions taken to deal with applicants who have arrest or conviction records. This should encourage employers to take a hard look at their employment applications and candidate interviews. A major reason the EEOC published this guidance is that technology has made criminal history information much more accessible to employers.

The EEOC counsels that there are two ways an employer’s use of criminal history may violate the 1964 and 1991 Civil Rights Acts. The first, Smith said, is to intentionally treat job applicants with similar criminal history information in a different manner based on race, color, religion, sex or national origin. This is referred to as “disparate **treatment** discrimination.” The second type of violation can occur even where employers apply criminal records uniformly. This may still result in disproportionately excluding people of a particular race or national origin in employment (“disparate **impact** discrimination”). If the employer does not show that such an exclusion is “job-related and consistent with business necessity” for the position in question, the exclusion is unlawful.

As most organizations prescribe to be an “equal opportunity employer,” you may want to take a look at the brief article [Best Practices for Fair-Chance Policies](#) by Max Mihelich. The author provides nine suggestions on how to handle this area of concern. He provides guidelines to ensure your company’s hiring practices are fair.

About the Author

E·A·S·I·Consult® works with Fortune 500 companies, government agencies, and mid-sized corporations to provide customized Talent Management solutions. E·A·S·I·Consult specialties include individual assessment, online employment testing, survey research, competency modeling, leadership development, executive coaching, 360-degree feedback, online structured interviews,

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