



Fair Hiring Practices for Criminal Background Checks

With roughly 1 in 4 people now having some form of criminal record, employers can no longer afford to use criminal records as an indiscriminate screening tool. Employers can protect themselves from several potential sources of liability by following the below practices. At the same time, they can increase their applicant pool, develop a more diverse and qualified workforce, and contribute to their communities by providing people with criminal records the opportunity to reach their full potential.

- 1) Remove criminal records questions from the employment application.**
These questions can be confusing for both the applicant and the employer, and prevent applicants from being evaluated based upon all of their skills and qualifications. If the position is not open to individuals with certain types of criminal records, provide a notice of those limitations to applicants.
- 2) Do not consider non-conviction records or expunged/pardoned cases.**
Minn. Stat. 181.981 protects employers from liability based upon records that did not ultimately lead to conviction (arrests only, dismissals, stays of adjudication, juvenile adjudications), or were expunged or pardoned. Additionally, not considering applicants with nonconviction records could be grounds for a civil rights action. Employers may want to consider these records for particularly sensitive positions, but should always inquire into the circumstances of the case before denying someone employment.
- 3) Only consider records directly related to the position sought.**
Some positions may not require any background check at all. Minn. Stat. 181.981 protects employers when a position does not place others at any greater risk than that created by the individual being employed generally or not being incarcerated. Even for positions that create some risk, some types of convictions may not be relevant.
- 4) Consider evidence of rehabilitation.**
If a conviction does directly relate to the position sought, the applicant should have the opportunity to show evidence of sufficient rehabilitation and fitness to perform the duties of the position, and the opportunity to identify inaccuracies in the criminal record.

***Note: If state or federal law governs criminal background checks for specific types of employment positions, then the state or federal law supersedes these principles.*

Contact Information:

Mark Haase
612-353-3035

haasem@crimeandjustice.org