



BETTER WORKPLACES
BETTER WORLD™

JANUARY 2019

Getting Talent Back to Work Toolkit

THE RESOURCES YOU NEED TO ADVANCE THE HIRING OF WORKERS WITH A CRIMINAL BACKGROUND.

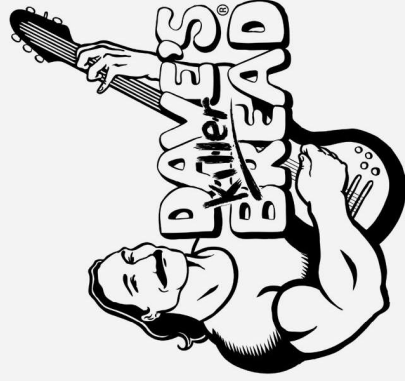
Q&A

Q: WHY SHOULD I HIRE SOMEONE WITH A RECORD?

A: NOT EVERYONE WITH A CRIMINAL RECORD IS A CAREER CRIMINAL

Many people with a record have made a single mistake, and, for millions, that mistake was possession of marijuana or driving under the influence. For others, it was shoplifting, passing a bad check or having an argument that turned into a physical fight.

When such crimes are not habitual the individual is often more vigilant in remaining on the right side of the law.



Our formerly incarcerated employees aren't just 'nonproblems.' They're role models in terms of performance, attendance and teamwork. They have an especially strong incentive to deliver value because they've seen the alternative, and, in the overwhelming majority of cases, they deliver.

—Gretchen Peterson, CHRO, Dave's Killer Bread

Q&A

Q: DO PEOPLE WITH CRIMINAL RECORDS MAKE GOOD EMPLOYEES?**A: MANY EMPLOYERS HAVE HAD VERY POSITIVE RESULTS FROM GIVING PEOPLE WITH RECORDS A SECOND CHANCE**

Johns Hopkins Medicine has hired hundreds of people with records, many for critical jobs involving patient care. When it conducted a multiyear audit of accidents and other major negative events involving employees, it found that not even one had been caused by an employee with a record. This is not unusual.

Other employers have reported that people with records often are so grateful for a chance that they are the most dedicated employees in the company and among those with the best retention rates.



Of all the groups we targeted, people with criminal records turned out to be the best employees, in part because they usually have a desire to create a better life for themselves ... and are often highly motivated.

—Denver-based telecommunications company founder

COMPLIANCE

Employers who use criminal records in their hiring decisions need to be aware of applicable federal and state laws.

Additionally, the **Fair Credit Reporting Act (FCRA)** governs how employers obtain and handle consumer reports, which include standard background checks. Legal compliance with these laws is key when considering formerly incarcerated applicants for hire.

Compliance

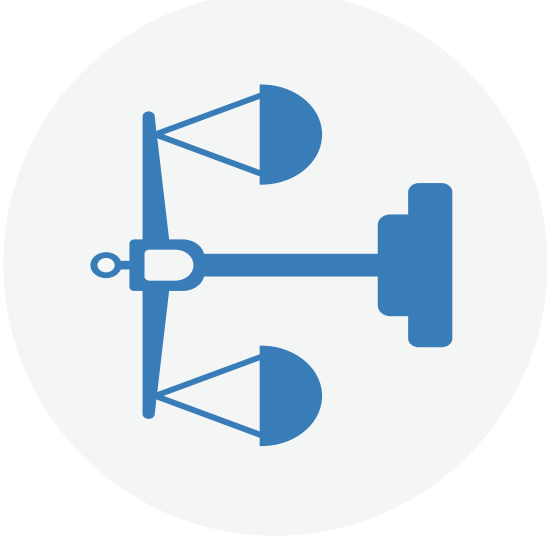
Title VII of the Civil Rights Act of 1964

Although federal law does not explicitly protect applicants from discrimination based on their criminal record, Title VII of the Civil Rights Act of 1964 does protect against discrimination based on race and ethnicity. **The Equal Employment Opportunity Commission (EEOC)** has issued guidance on employers' use of criminal background checks to address its concern that those checks have an unintended discriminatory impact on particular minority groups.

An employer who adopts a blanket policy of excluding all applicants with an arrest record could face disparate impact liability under federal nondiscrimination law if **(a) such policy or practice disproportionately affects a protected class, and (b) the employer cannot show that the policy or practice is “job related and consistent with business necessity.”**

A violation may also occur when an employer treats criminal history information differently for different applicants or employees based on their race or national origin (disparate treatment liability).

The EEOC's guidance emphasizes that any denial of employment due to an arrest record should be based on an individualized assessment that considers the applicant, the nature of the criminal offenses in his or her history, and how these offenses relate to the performance of a particular job.



Compliance

Tools & Resources

The following information and tools will help to ensure a compliant hiring process:

- **QUIZ:** [Take our quiz to test your knowledge!](#)
- **CHECKLIST:** [6 Tips for Using Criminal Records in Hiring Decisions](#)

Additional Resources

Please see the following resources for additional guidance:

- [EEOC Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964](#)
- [Pre-Employment Inquiries and Arrest and Conviction](#)
- [What You Should Know About the EEOC and Arrest and Conviction Records](#)
- [EEOC Tips for Small Businesses – Criminal Records](#)
- [Background Checks: What Employers Need to Know](#)
- [PowerPoint Presentation – Federal Discrimination Laws](#)
- [Managing Equal Employment Opportunity](#)
- [How to Conduct Compliant Criminal Background Investigations](#)

Compliance

Ban the Box

Several state laws and local ordinances limit the use of arrest and conviction records by prospective employers. Commonly referred to as “ban-the-box” laws, these restrictions prohibit the employer from asking an applicant any questions about criminal records on the employment application or early in the screening process. Other state laws restrict the employer’s use of arrest or conviction data in making an employment decision, except in limited circumstances, or the laws may require that criminal history questions be asked only after an offer of employment has been made.

Employers should investigate any state or local laws prior to asking about an applicant’s criminal history.

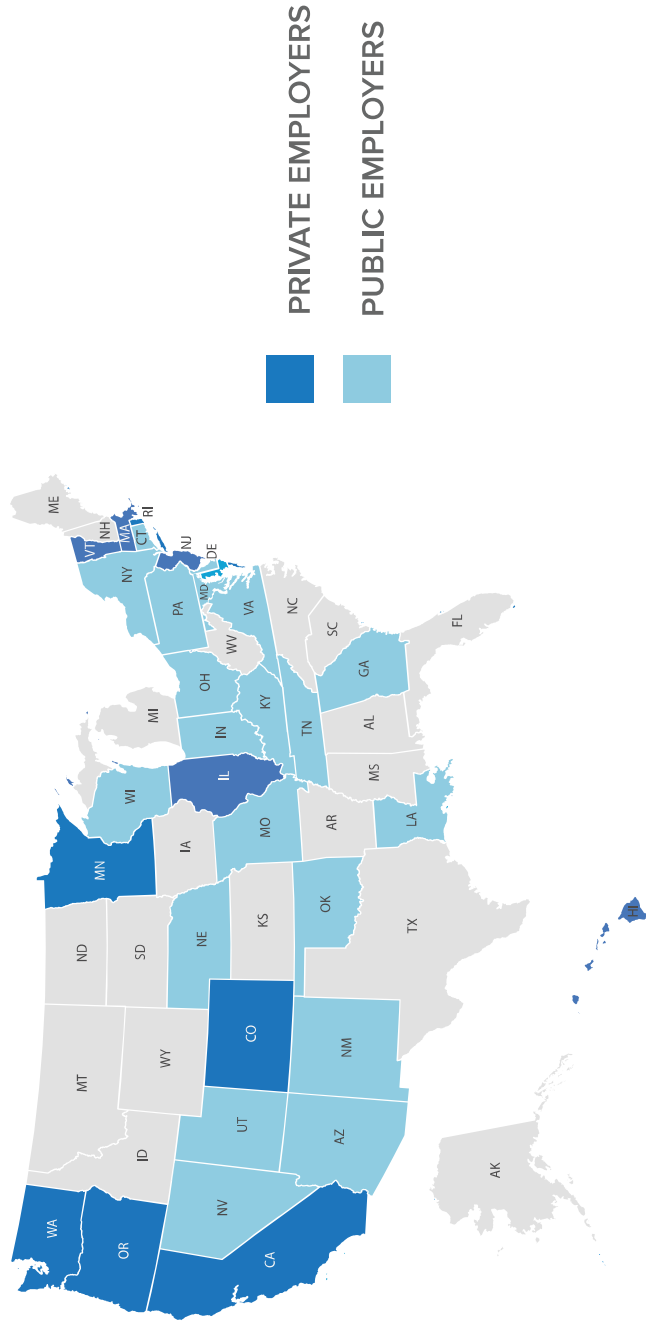
Although there is no federal prohibition on asking applicants about criminal history on an employment application, the EEOC states:

“As a best practice, and consistent with applicable laws, the Commission recommends that employers not ask about convictions on job applications and that, if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity.”



Compliance

Ban-the-Box Laws by State



The following states have implemented laws for **private employers**:

- California
- Colorado
- Hawaii
- Massachusetts
- Minnesota
- New Jersey
- Oregon
- Rhode Island
- Vermont
- Washington

The following states have implemented laws for **public employers**:

- Arizona
- Connecticut
- Delaware
- Georgia
- Indiana
- Kentucky
- Louisiana
- Maryland
- Missouri
- Nebraska
- Nevada
- New Mexico
- New York
- Ohio
- Oklahoma
- Pennsylvania
- Tennessee
- Utah
- Virginia
- Wisconsin

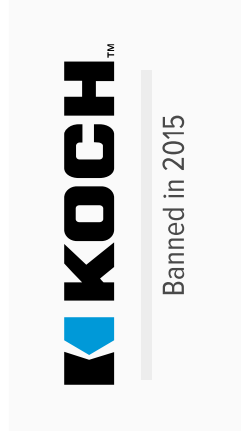
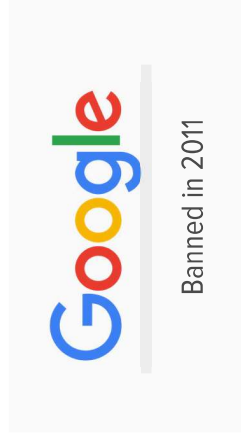
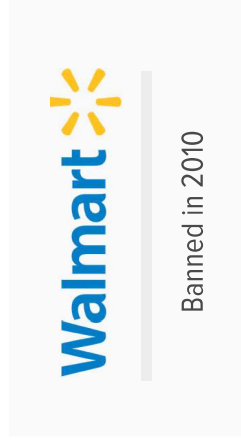
Compliance

Companies That Have Voluntarily Banned “the Box”

Even when state laws do not restrict employers from asking about criminal history early in the hiring process, many employers have voluntarily removed the question from their applications and moved such inquiries to the end of the hiring process.

Voluntarily banning the box not only sets a tone with applicants and lets them know that fair-chance hiring practices are in place, it also ensures legal compliance as ban-the-box laws continue to spread.

Companies That Voluntarily Banned “The Box”



Ban-the-Box Resources

Please see the following resources for additional guidance:

- [Ban-the-Box Laws by State and Municipality](#)
- [The Fair Chance/Ban-the-Box Toolkit](#)
- [‘Ban the Box’ Turns 20: What Employers Need to Know](#)

Compliance

CHECKLIST: FCRA COMPLIANCE

The following checklist can be used to ensure compliance with the requirements of the FCRA.

☐ Provide written notice in a stand-alone document to the applicant or employee that a background check will be conducted and the information will be used when making employment decisions.

☐ If an investigative report that includes personal interviews concerning a person's character, general reputation, personal characteristics and lifestyle will be conducted, notify the applicant or employee of this in writing and include a statement that the individual has a right to request additional disclosures and a summary of the scope and substance of the investigative report.

☐ Obtain the applicant or employee's written consent to obtain the background check and/or investigative report.

☐ Provide certification to the company that is providing the background check information that you have obtained the individual's permission, complied with all FCRA requirements, and will not discriminate or otherwise misuse the information in the report.

☐ If a decision is made to take an adverse action based on the background check information, provide the individual with a notice of pre-adverse action that includes a copy of the background check results and a copy of A Summary of Your Rights Under the Fair Credit Reporting Act.

☐ Allow the individual at least five business days to dispute the information in the background check before making a final employment decision.

☐ Make a final decision. If an adverse action is taken, provide the applicant or employee with a final notice of adverse action that includes the following:

- The name, address and phone number of the consumer reporting company that supplied the report.
- A statement that the company that supplied the report did not make the decision to take the unfavorable action and can't give specific reasons for it.
- A notice of the person's right to dispute the accuracy or completeness of any information the consumer reporting company furnished and to get an additional free report from the company if he or she asks for it within 60 days.

☐ Retain records as required under state and federal law and dispose of records by burning, pulverizing or shredding paper documents and destroying electronic information so that it can't be read or reconstructed.

Compliance

The Fair Credit Reporting Act (FCRA)

The Fair Credit Reporting Act (FCRA) governs how employers obtain and handle consumer reports, which include criminal history background checks. When an employer uses a third party to conduct background checks, the employer must advise the applicant or employee in writing that a background check will be conducted and obtain the individual's written authorization to obtain the records.

Certain other disclosures are required upon the applicant or employee's request and prior to the employer's taking any adverse action based on the reports obtained. Employers must also comply with state and local laws regarding the use of consumer reports.



FCRA Resources

Please see the following resources for additional guidance:

- [When do employers need to comply with the Fair Credit Reporting Act?](#)
- [FCRA Authorization to Obtain a Consumer Report](#) (background/credit check)
- [Fair Credit Reporting Act Disclosure Statement](#)
- [Summary of Rights Under the Fair Credit Reporting Act](#)
- [FCRA Preliminary Notice of Adverse Action](#)
- [FCRA Final Notice of Adverse Action](#)

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