



BETTER WORKPLACES
BETTER WORLD™

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Getting Talent Back to Work Toolkit

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

RISK ANALYSIS

All hiring decisions involve risk; even the strongest applicants sometimes fail to become strong employees.


And not all convictions pose a significant risk to all jobs. The threshold question is whether the job in question presents an opportunity for the type of conduct involved in the conviction.

Risk Analysis

RISK ANALYSIS

Considerations in your risk analysis would include the following:


Does the conviction pose job-related risk?



In some cases, this is very straightforward. A DUI/DWI conviction, for example, indicates a risk for jobs involving operating a motor vehicle. For other jobs, this poses no risk. Theft convictions are relevant for jobs that involve unsupervised access to cash or property that can be sold for cash. Convictions for crimes of violence are generally a concern for jobs that involve unsupervised access to vulnerable populations, such as children, seniors, women, hospital patients and others who have a reduced ability to protect themselves physically.

Other types of offenses are more complex. Possession of controlled substances raises different risks depending upon the drug involved. Relatively recent possession for “hard” drugs, such as heroin, cocaine and methamphetamines, indicates that the applicant may be addicted, which is a potential problem in any job. Possession of marijuana does not carry a similar risk but may still present legitimate concerns for safety-sensitive positions. Convictions for the sale of controlled substances are a risk factor in jobs involving access to controlled substances.

How serious is the prior offense?



The name of the offense reveals little about how serious it was. Theft can mean anything from shoplifting a low-cost item to stealing a million dollars. Assault can be getting into a shoving match after a traffic accident or attacking someone with a weapon and causing serious bodily injury. Selling drugs can refer to a large-scale distribution operation or selling a small amount of marijuana to another student in a college dormitory.

Employers can learn more about the conduct involved in the prior offense from the charge sheet (known as a complaint in some jurisdictions). This generally contains a brief description of the conduct that gave rise to the arrest. The charge sheet is part of the public record, which the employer can obtain through a consumer reporting agency. Charges frequently contain indications of the severity of the offense. For example, some jurisdictions divide assault into “simple assault” and “aggravated assault.” A person with experience in the criminal justice system can often provide insight into the nature of the offense from these distinctions. In some cases, employers may be able to get information about underlying conduct from a probation or parole officer, a prosecuting or defense attorney, or the applicant.



How many prior convictions does the applicant have?

Most people have done something in their lives for which they could have been arrested—perhaps driving while intoxicated or getting caught in a brawl outside the stadium of a losing team. The difference between someone with a single prior conviction and someone with no record is often just luck. In such cases, the risk of a new arrest is relatively low. Two or more prior convictions are a red flag that requires more careful analysis.



How serious is the potential harm?

The potential harm from misconduct by an employee with a criminal record varies from company to company. This is especially true for property crimes. The potential harm from a dishonest employee in a convenience store is much less than the potential harm from one in a jewelry store or a financial institution.

Additionally, a new arrest is not necessarily a problem for the employer. In many cases, neither the employer nor its employees are the victims of the new offense. In these situations, the employer is harmed by the new arrest only if the employee is incarcerated.



Has the applicant been referred by an established re-entry organization?

There is little or no risk when the applicant comes from an established re-entry organization with a strong history of successfully placing clients with employers. Some examples include:

- [Cara](#) (Chicago, IL)
- [Chrysalis](#) (Los Angeles, CA)
- [Hope for Prisoners](#) (Las Vegas, NV)
- [Per Scholas](#) (Atlanta, GA; Cincinnati and Columbus, OH; Dallas, TX; Washington, DC; New York, NY)
- [Prison Entrepreneurship Program](#) (Houston and Dallas, TX)
- [Thistle Farms](#) (Nashville, TN)
- [Twin Cities Rise](#) (Minneapolis and St. Paul, MN)

Has the applicant been bonded under a federal, state or local bonding program? Such organizations have great expertise in determining whether a candidate is job-ready. They also know that serious misconduct by a client would damage their ability to place other clients. This gives them an incentive to be extremely careful in recommending a client to an employer.



Has the applicant changed or been reformed?

People are not the same; some people learn from their mistakes, and others do not. While accurately assessing the level of reform someone may have achieved is beyond most of our abilities, taking the time to consider that the applicant may have changed is worthwhile.

Successful work experience after a conviction is a strong indicator that someone with a record has changed. Even if the person is not currently employed, the fact that the applicant worked successfully after the conviction suggests a positive change.

Rehabilitation efforts after the offense, such as participation in education and training programs, or continuation in a 12-step program (and acting as a sponsor), are additional signs that someone has made a change.

Finally, rehabilitation involves an internal change. People stop rationalizing their misconduct and accept responsibility for it. Their “internal narrative” changes. Of course, a person seeking a job knows the narrative an employer wants to hear. But it is difficult to fake a sense of responsibility, and an employer who listens carefully can often sense when this happens.

Risk Analysis

Insurance

There is an array of insurance products for businesses that protect against various types of liability. One, the fidelity bond, exists to protect a business and its customers from monetary theft perpetrated by an employee or independent contractor engaged by the employer. One of the oldest forms of insurance, a fidelity bond must be purchased before a business license is issued in many states.

A fidelity bond typically covers monetary and asset losses that occur when an employee commits forgery, embezzlement, identity theft, securities fraud and other forms of theft. Long-standing insurance practices excluded employees with prior theft convictions from coverage, giving employers a reason to shy away from hiring them.

But changes are underway, and brokers and underwriters understand that employers cannot categorically refuse to hire people with a criminal record without risking a discrimination claim; therefore, fidelity bond coverage must meet that need.

Employers should educate their broker on the policies and practices in place to reduce hiring risks, such as screens and individual assessments, and orientation and mentoring programs. When a broker has evidence of how employment decisions are made regarding people with criminal records, and how orientation and other programs create an organizational culture in which employees know what is expected of them, they can take that information to underwriters to advocate for a fair and inclusive policy.

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