

EEOC Issues Guidance on Employers' use of Arrest and Conviction Records

1 min read

Apr 26, 2012

When can an employer conduct a criminal background check on an applicant or existing employee?

Employers screening the criminal backgrounds of applicants and employees must demonstrate their use of the acquired information is job-related to avoid potential discrimination claims. the U.S. Equal Employment Opportunity Commission ("EEOC") reminded employers in its [most recent enforcement guidance](#).

Citing concerns that employers could use arrest and conviction information to illegally discriminate against job applicants, especially black and Hispanic applicants, the EEOC clarified that criminal record information obtained during background checks cannot be used to screen potential or current employees under Title VII of the Civil Rights Act of 1964 unless a conviction is related to the work to be performed or if an applicant is applying for a fiduciary-based position.

The EEOC did not impose an outright ban on the use of criminal checks but called for careful consideration of how and when such reviews can be used in pre-employment screenings and in the workplace, because of their potential to be biased against certain groups, such as racial minorities.

Employers must assess their hiring protocol and the use of criminal checks to ensure compliance with the new regulations.

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Topics

Discrimination, Background Checks

