

There is no current Nevada law prohibiting an employer from considering an applicant's or employee's criminal history, including felony conviction(s), in making personnel decisions. However, any time an employer uses an applicant's or employee's background information, including a criminal history check, to make an employment decision, employers must still comply with state and federal laws that protect applicants and employees from discrimination. Title VII of the Civil Rights Act protects individuals from discrimination based on the protected categories of race, color, national origin, sex, and religion. Other protected categories under federal and/or Nevada law include age, disability, genetic information, sexual orientation and gender identity or expression.

Employer and Community Training

The best way to combat discrimination is to prevent it from happening in the first place. NERC'S representatives are available to provide training and to speak at seminars and meetings about discrimination laws and preventing discrimination.

NERC also provides posters and brochures for employers to display in the workplace to help employees understand discrimination laws. For more information about securing a speaker or obtaining materials, call one of NERC'S offices or go online to www.nvdetr.org.

An equal opportunity employer/program
Auxiliary aids and services available upon request
for individuals with disabilities
TTY (775) 687-5353
Relay 711 or (800) 326-6868

Nevada Equal Rights Commission
1820 E. Sahara Ave. Suite 314
Las Vegas, NV 89104
Phone (702) 486-7161
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Nevada Equal Rights Commission
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Room 115
Reno, NV 89502
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Overcoming Bias Arrests & Convictions: *An Employer's Guide*



GREEN ANALYSIS

The Equal Employment Opportunity Commission (EEOC) has issued guidance to employers for considering applicants or employees with conviction records as explained in *Green v. Missouri Pacific Railroad Company*, 549 F.2d 1158 (1977).

If an applicant or employee is to be excluded from being hired or promoted because the applicant or employee has a conviction record, the employer should consider:

- The nature and gravity of the offence(s),
- The time passed since the conviction/ completion of the sentence, and
- The nature of the job for which the applicant has applied.

The employer should also conduct an individualized assessment of the applicant or employee to determine if the exclusion is job-related and consistent with a business necessity. The individualized assessment should consist of notice to the individual that he/she has been screened out because of a criminal conviction; an opportunity for the individual to demonstrate that the exclusion should not be applied due to his/her particular circumstances; and consideration by the employer as to whether the additional information provided by the individual warrants an exception to the exclusion and shows that the policy as applied is not job related and consistent with business necessity.

The individual may provide information that he/she was not correctly identified in the criminal

record, or that the record is otherwise inaccurate. Other relevant information includes, for example:

- Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents or criminal conduct;
- Rehabilitation efforts, e.g. education/training;
- Employment or character references and any other information regarding fitness for the particular position.

DISPARATE IMPACT

A violation of state and federal law may occur when an employer's neutral policy (i.e. excluding applicants who have an arrest or conviction) disproportionately impacts individuals of a protected category unless the exclusion is job-related and consistent with a business necessity.

Arrest and incarceration rates are particularly high for African American and Hispanic men; therefore, an employer's neutral policy of excluding applicants or employees who have an arrest or conviction may disparately impact African American and Hispanic men if an employer cannot show that the exclusion is job-related and consistent with a business necessity.



DISPARATE TREATMENT

A violation of state and federal law may occur when an employer only excludes applicants or employees of a particular protected category for having an arrest or conviction and not others belonging to other protected categories with a similar arrest or conviction.

RECORDS

Records which contain an applicant's criminal history may not always be reliable. While a conviction generally serves as proof that the individual committed a criminal offense, an arrest does not serve as proof. Additionally, a criminal record may be incomplete or contain inaccurate information.

CONFIDENTIALITY

Keep information about applicants' and employees' criminal records confidential. Only use it for the purpose for which it was intended.

OTHER LAWS

The Fair Credit Reporting Act imposes a number of obligations on employers that wish to use background checks, including criminal history checks to screen applicants.

