

ALERTS

Employment Law Update- New EEOC Guidance on the Use of Criminal Records in Making Employment Decisions

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An Enforcement Guidance issued April 25 makes this a good time for employers to take a fresh look at their policies and practices regarding the use of criminal records in employment decisions. While the U.S. Equal Employment Opportunity Commission considers the new Guidance a reaffirmation of long-standing policies it may also signal that decisions based on criminal records are likely to receive more demanding scrutiny from the EEOC in the future. At the same time, however, the Guidance offers ways for employers to insure that their use of arrest or conviction records passes legal muster.

The Guidance includes the EEOC's recommendations for employer best practices, compliance with which is likely to benefit employers in any future review by the EEOC:

- Eliminate policies and practices that exclude people from employment across the board based on a criminal record of any kind;
- Train employment decision-makers in how to avoid employment discrimination in the use of criminal records;
- Develop a narrowly tailored written policy for screening applicants for criminal conduct that is based on essential job requirements;
- Document the justification for the policy and procedures; and,
- Keep information about criminal records confidential.

Employers should review the Guidance and revisit or revise employment policies and practices that consider criminal records in making employment decisions. Employers should also evaluate and update current training or implement additional training based on the Guidance.

The full text of the Guidance and a summary Questions and Answers document are available on the EEOC website at the following link: <http://www.eeoc.gov/eeoc/newsroom/release/4-25-12.cfm>

If you have any questions or want assistance, please call or e-mail any member of our Employment Group.