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Need To Check An Employee's Criminal Background? Tread Carefully

May 25, 2017 | [EEOC, Labor And Employment](#)

Federal laws do not prohibit employers from asking about a job applicant's criminal history. But equal employment opportunity (EEO) and federal laws prevent employers from discriminating against job applicants on the basis of this information. The Equal Employment Opportunity Commission (EEOC) has guidelines that establish the following rules:

- Title VII of the Civil Rights Act prohibits employers from treating people with similar criminal records differently because of their race, national origin, color, sex or religion
- Title VII also prohibits employers from using policies that screen individuals based on criminal history information if the company's policies:
 1. significantly disadvantage Title VII-protected persons such as African American and Hispanics; AND
 2. do not help the employer accurately decide if the person is likely to be a responsible, reliable or safe employee.

As the guidelines make clear, even a facially neutral and uniform company policy can be suspect if it disproportionately excludes people of a particular race or national origin. In such a "disparate impact" case, an employer must show that the exclusion is job related. Employers need to remember that while they may disqualify employees on the basis of criminal background checks, such disqualification cannot be applied in a discriminatory way.

Having a uniform background check procedure that complies with state law isn't enough; the company's policy also has to comply with complex federal

and EEO laws. Employers should consider reviewing their screening processes to determine if there are any risks of disparate impact present.