



# Tools to Help Clients with Criminal Records Gain Employment

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# Race Discrimination in Employment: Criminal Records

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# What We Are Going to Discuss

1. Define some legal terms and describe and put a few things in context.
2. Talk about why race is important to consider in the employment and criminal record context.
3. Describe disparate impact.
4. Describe how an employer can legally use a criminal record to make a hiring decision.
5. Define individual assessments.
6. Give a few helpful tips and next steps if you feel discrimination has occurred.

# A Few Quick Things

- Misdemeanors in Connecticut are lower level crimes and carry a maximum penalty of a \$2000 fine and up to 364 days in jail.
- Felonies are more serious crimes with the lowest level in Connecticut being a Class E felony punishable by a \$3500 fine and up to 3 years in prison.
- Connecticut juvenile arrests and convictions are 100% sealed and are not to be shared with any employer unless required by law, which would be rare.
- If an arrest is nolled, after 13 months it will be automatically erased. If an arrest is dismissed, it will be automatically erased right away.
- A person can apply for a pardon – aka record erasure - 3 years after a misdemeanor case ends and 5 years after a felony case ends. Also, beginning in January 2023, most misdemeanors will be automatically erased after 7 years and some felonies after 10 years.

# Just A Few More ...

- If you want to lookup someone's adult Connecticut criminal record you can go to [jud.ct.gov/crim.htm](http://jud.ct.gov/crim.htm). Other states have other ways to lookup a criminal record. You can also pay for a private criminal record search.
- Some State and Federal laws specifically address who can be hired for certain positions. For example jobs in hospitals, schools, or other sensitive careers.
- The law we are going to discuss today comes from guidance issued by the U.S. Equal Employment Opportunity Commission regarding the application of Title VII of the 1964 Civil Rights Act. It's important to enact Connecticut legislation that codifies this guidance in Connecticut law.



# Hiring Policies & Why Race Is Important

- African Americans and Hispanics are arrested at a rate that is 2 to 3 times their proportion of the general population. Assuming that current incarceration rates remain unchanged (2012), about 1 in 17 White men are expected to serve time in prison during their lifetime, 1 in 6 Hispanic men, and 1 in 3 African American men.<sup>1</sup>
- In one survey<sup>2</sup>, a total of 92% of responding employers stated that they subjected all or some of their job candidates to criminal background checks. Employers report that their use of criminal history is related to combatting theft and fraud, concerns about workplace violence, potential liability for negligent hiring, and State and Federal laws requiring background checks for certain types of employment.
- Even though policies may appear to be neutral, if African Americans and Hispanics have a disproportionate share of arrests and convictions, and employers are frequently using criminal records to screen workers, African Americans and Hispanics are going to be more impacted by criminal record policies as compared to their White peers.

1. Equal Employment Opportunity Commission Enforcement Guidance 915.002, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act*, at II. A., 4/25/2012.
2. *Id.* at III. B.

# What is Disparate Impact Discrimination under Title VII?

- Title VII of the Civil Rights Act of 1964 prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex or national origin.
- Title VII applies to private-sector employers with 15 or more employees, to state and local government employers with 15 or more employees, and to the federal government as an employer.
- Disparate impact occurs when policies, practices, rules or other systems that appear to be neutral result in a disproportionate impact on a protected group, like race. For example, hiring policies regarding criminal records that appear neutral but may impact people because of their race.

# When Can an Employer Legally Use a Criminal Record?

- It is legal for an employer to use an applicant's criminal background against the applicant if the employer's decision is job related for the position in question and consistent with business necessity.
- An employer's decision based on an arrest, by itself, is not job related and consistent with business necessity. However, an employer may look at the underlying conduct leading to the arrest to help the employer make a decision.
- Question: A minority job applicant has been convicted of 3 retail thefts in the past two years. The applicant applies for a job as a bank teller but the bank refuses to hire the applicant as a bank teller. Is the decision job related for the position in question and consistent with business necessity?

# What Steps Must an Employer Follow When Using Criminal Backgrounds?

- An employer cannot ask about a criminal record on the first job application because of Connecticut's Ban the Box law.
- An employer cannot have a blanket policy or practice refusing to hire anyone with a criminal record, or even anyone with certain types of criminal records.
- Best practices by an employer include having written practices and policies, putting any decisions to the applicant in writing, limiting questions about the criminal record to those that are job related and consistent with business necessity, and offering other areas where employment may be more suitable.
- An employer must do an individualized assessment of each applicant's criminal record.

# Individualized Assessments

- An individualized assessment means that when an employer tells the applicant they may not be hired, or the employer tells the current employee they may be fired or otherwise negatively impacted because of their criminal record, the employer will consider additional information from the applicant to help decide if the decision is job related and consistent with business necessity.
- It is best practice for an employer to ask questions about the applicant's criminal and personal history, but to also keep their questions relevant to deciding if the criminal convictions are job related for the position in question and consistent with business necessity.



# What Should Employers Ask With Individualized Assessments?

- An individualized assessment should include (if the applicant wants it to):
  1. The facts or circumstances surrounding the offense or conduct;
  2. The number of offenses for which the individual was convicted;
  3. The applicant's age at the time of their conviction or release from prison;
  4. Evidence that the individual performed the same type of work, post their conviction, with no further incidents of criminal conduct;
  5. The length and consistency of employment history before and after the offense or conduct;
  6. Rehabilitation efforts including education/training, etc.;
  7. Employment or character references and any other information regarding qualifications for the particular position.
- If the applicant does not respond to the employer's attempt to gather additional information about their criminal background, the employer may make its employment decision without the information.

# What To Do If There is Discrimination

1. Ask the employer to put the employment decision in writing. Also ask for a copy of the criminal background check the employer used.
2. Ask the employer to do an individualized assessment.
3. If the employer refuses to do an individualized assessment, write a brief letter explaining your understanding of the law and why an individualized assessment is required.
4. If after an individualized assessment the employer still says the applicant is not qualified, ask if there are other positions for which they may be qualified.
5. With or without an attorney, file a complaint with the Connecticut Commission on Human Rights and Opportunities. Step #1 is to lookup the contact information for the CHRO office where the discrimination occurred and ask their staff for a complaint packet: <https://portal.ct.gov/CHRO/Complaint-Process/Complaint-Process/How-to-File-a-Discrimination-Complaint>.

# Helpful Tips

1. Know what's on an applicants criminal record before they apply.
2. Prepare the applicant to discuss their criminal record when applying for jobs, and help gather supporting documents including letters from probation officers, therapists, community programs, volunteer programs, or others activities detailing the applicant's rehabilitative history.
3. Consider Certificates of Employability which are official letters from the State removing certain mandatory barriers to employment. This shows the employee has taken an extra step and that the applicant is legally allowed to do certain work: [https://jud.ct.gov/cssd/cert\\_emp.htm](https://jud.ct.gov/cssd/cert_emp.htm).
4. Consider pardons – aka record erasure - when eligible 3 years after a misdemeanor case ends and 5 years after a felony case ends: <https://portal.ct.gov/BOPP/Pardon-Division/Pardon/Absolute-Pardon>. Help the applicant gather at least 3 recommendations, obtain copies of their police reports, and draft answers to the application questions about their crimes and their rehabilitative process.
5. Have the applicant write down a good timeline before they file a complaint or speak with an attorney. Have the applicant file a complaint with the CHRO soon after the employer's negative hiring decision.

# Question For You

- Question: A 23 year old minority job applicant has been convicted of 1 misdemeanor trespass after a family domestic violence incident 5 years earlier while still living at home with his mother, and 1 felony theft while in college 4 years earlier for writing a handful of bad checks. The applicant applies for a job as an IT security specialist after completing a 1 year IT security certification course. During that course he received good grades, worked part time as an EMT, and completed one IT security internship. The IT company refuses to hire the applicant.
  1. Is the decision job related for the position in question and consistent with business necessity?
  2. What would you want more to know more about?
  3. What's the next steps to get this person a job in their chosen field of IT security?

# Resources

- Applying for Jobs and Housing: What I Need to Know About My Criminal Record - Center for Children's Advocacy Brochure: <https://cca-ct.org/wp-content/uploads/2021/12/CCA-criminal-record-discrimination-brochure.pdf>.
- Platform to Employment – Connecticut work readiness and career development training with employer short-term subsidies: <https://platformtoemployment.com/>.
- Project Reentry Ex Offender Program - <https://www.nrwib.org/programs/employment-training/ex-offender-re-entry-program>.
- Hartford Best Chance Program with Capitol Workforce Partners - <https://capitalworkforce.org/best-chance-for-a-second-chance/>.
- American Job Centers - workshops for job training and job search programs. Special employment programs for previously incarcerated individuals.

# Resources

- Fair Chance Pledge – a group of business that have committed to providing a fair chance to employment for those with criminal records: <https://obamawhitehouse.archives.gov/issues/criminal-justice/fair-chance-pledge>.
- Job search specifically for those with criminal records: [jobsforfelonshub.com](http://jobsforfelonshub.com); [secondchancejobsforfelons.com](http://secondchancejobsforfelons.com); [helpforfelons.org](http://helpforfelons.org); [felonyfriendlyjobs.org](http://felonyfriendlyjobs.org).
- CT Reentry Resource Guide & Roundtables: <http://ctreentry.org/resources/resource-guides>.