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Management, Marketing, Strategic Planning

October, 2012

PAY ATTENTION TO BACKGROUND CHECKS AND JOB DESCRIPTIONS

The Equal Employment Opportunity Commission recently issued a new guidance that could cause – or prevent – problems for employers.

The EEOC now “recommends” that employers do not ask any questions about criminal convictions on job applications. According to some lawyers, the reason for this recommendation is that statistics indicate that people of certain races and national origins are disproportionately arrested and convicted of crimes. Therefore, according to these lawyers, policies against hiring anyone with a criminal background are discriminatory in the eyes of the EEOC.

Taken by itself, this guidance might not seem to be a problem. In fact, it could be regarded as a sound hiring policy. But it really confronts employers with the horns of a dilemma. If they run a background check, they risk a potential law suit for discrimination but, if they don't, they run the risk of exposing themselves to liability for negligent hiring.

So what can an employer do?

To begin with, review existing policies and be prepared to provide the agency with specific and sound reasons why information revealed in a background check is relevant to the position candidates are being considered for. That will require a thorough review of most job descriptions.

Then, one lawyer suggests, consider making an offer of employment that is contingent on satisfactory completion of a background check. That would narrow the pool of candidates who would apply and also reduce the potential number of people who are not hired and might then file a discrimination claim.

Yes, this adds one more step to the hiring process. But it's certainly better than being involved in a law suit.

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