

## Criminal Records

While in the process of filling a vacant position, you discover that an applicant has a criminal record. How do you consider an individual's criminal record when making hiring or other employment decisions?

This is a complex issue. The following advice is based on the federal employment discrimination laws enforced by the EEOC. However, as indicated below, other laws may impose additional restrictions on your business.

1. **Treat applicants with similar criminal records consistently.** For example, do not refuse to consider Hispanic applicants who have criminal records if you consider applicants of other national origins who have the same or similar criminal records.
2. **Avoid using an employment policy or practice that excludes people with certain criminal records** if the policy or practice significantly disadvantages individuals of a particular race or national origin, and does not accurately predict who will be a responsible, reliable or safe employee.



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3. **If you ask applicants for criminal history information, consider waiting until later in the hiring process to do so.** That way, you'll have the opportunity to consider applicants' qualifications for the job before you [assess the relevance](#), if any, of applicants' criminal history.
  - a. However, in [some circumstances](#), you may need to request criminal history information early in the hiring process to comply with certain laws or regulations.
4. **Determine how the applicant's criminal history relates to the risks and responsibilities of the job.** Among other things, consider [the nature or gravity of the crime](#); [the time that has passed since the criminal conduct occurred](#); and [the nature of the job](#).
5. **Treat arrest records differently than conviction records.** The fact that someone has been arrested is not proof that he committed a crime. Arrest records may be inaccurate (for example, they may mistakenly identify who was arrested) or incomplete (for example, they may not indicate whether charges were filed or dismissed). However, an arrest may trigger an inquiry into whether the conduct underlying the arrest justifies a negative employment decision.
6. **Consider reviewing the accuracy and relevance of a conviction record before basing an employment decision on that record.** Conviction records are usually proof that a person participated in criminal activity. However, in certain circumstances, you may decide not to rely on a conviction record when making an employment decision. For example, you may conclude that the record is inaccurate or outdated.
7. **Give applicants an opportunity to explain their criminal history.** [Inform applicants](#) if they may be excluded from consideration because of prior criminal conduct. Provide them with an opportunity to respond, and consider [reevaluating them based on their explanation](#).

Other laws may impose additional restrictions on your business. For example, the Fair Credit Reporting Act (FCRA) requires you to [take certain steps](#) before you can get an employee background check, and before and after you make an employment decision based on that background check.

In addition, some [federal](#), [state and/or local laws](#) restrict or prohibit the employment of individuals with certain criminal records.

These rules can be complicated. You may want to consult a lawyer or [contact the EEOC](#) for assistance.



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