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ILLEGAL JOB-SCREENING PRACTICES WORSEN UNEMPLOYMENT AMONG AFRICAN AMERICANS

EEOC Forum to Evaluate Impact of Criminal Records Screening on Workers of Color

Washington, DC—With the African-American unemployment rate hovering sky-high at 16 percent, the U.S. Equal Employment Opportunity Commission (EEOC) is holding a full commission meeting today to examine one of the contributing factors to the black unemployment crisis: the widespread use of criminal background checks, which have a major impact on workers of color struggling to find work in today's economy.

At today's EEOC forum, employers and policy and legal experts will discuss how employers handle these background checks. They will take stock of the federal government's approach to dealing with employers who illegally screen out applicants because of prior arrests or convictions without taking into account the age, seriousness, and relevance of the criminal record, as required by EEOC guidelines interpreting Title VII of the Civil Rights Act of 1964.

The National Employment Law Project (NELP), together with interested organizations around the country, submitted [comments](#) to the EEOC applauding the agency's attention to the issue and calling for updated EEOC guidelines, given the vast expansion of the practice. The current EEOC guidelines date back to 1987 and were issued under the Reagan administration.

"As the use of background checks expands, many employers are routinely excluding all job applicants with criminal records from consideration, no matter how minor or dated their offenses," said Maurice Emsellem, policy co-director of the National Employment Law Project. "Background checks are meant to ensure a safe work environment, but many employers have gone way too far, shutting out highly qualified candidates without even bothering to ask common-sense questions: What was the conviction for? How long ago was it? Is it even relevant to this job? What's the person done with his or her life since?"

Communities of color are particularly hard hit by the expanded use of criminal background checks by employers, which exacerbates the already severe effects of the recent economic downturn and anemic recovery to date. The average unemployment rate in 2010 for blacks was 16 percent, compared with 8.7 percent for whites and 12.5 percent for Hispanics. The widespread use of background checks only adds to the historic challenges that African Americans continue to face in finding equal opportunity in employment.

The impacts are not only felt by communities of color, however. More than one in four U.S. adults—roughly 65 million Americans—have arrests or convictions that will show up in routine criminal background checks, according to a [recent report](#) from the National Employment Law Project. Use of these background checks by employers has grown exponentially: 92 percent of employers conduct criminal background checks on some or

all job applicants, according to a [2010 Society for Human Resources Management survey](#), up from 51 percent in 1996.

“We’re dealing with a fundamental issue of fairness here. People are human, we all make mistakes, but mistakes should not define who we are for the rest of our lives. But when employers use blanket screening policies that don’t even give highly qualified applicants a chance to explain what the arrest or conviction was about, it becomes a serious problem,” said Emsellem. “Millions of Americans are having these old or minor arrests or convictions come back to haunt them, years later, after they’ve already made amends and moved on with their lives.”

The existing EEOC guidelines regarding employers’ use of criminal records date back more than 20 years. In 1987, the EEOC made clear that “an employer’s policy or practice of excluding individuals from employment on the basis of their conviction records has an adverse impact on Blacks and Hispanics in light of statistics showing that they are convicted at a rate disproportionately greater than their representation in the population.” Because of this adverse impact, the EEOC concluded in 1990 that “an employer may not base an employment decision on the conviction record of an applicant or employee absent business necessity,” which means that employers must take into account reasonable factors, including the age and seriousness of an offense in relation to the specific job at issue.

“It’s been more than two decades since the EEOC issued its guidelines on how employers should be using arrest and conviction records. With the rapidly expanding use of these checks, it’s become a huge issue affecting tens of millions of Americans now. We applaud the EEOC commissioners for taking this up, and we urge them to update the guidelines and aggressively enforce the law and expand its education and outreach to employers and workers,” said Emsellem.

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