

EEOC Cracking Down on Use of Criminal Background Checks

by Robert Levy on August 13, 2013

The Equal Employment Opportunity Commission (EEOC) is cracking down on how employers use criminal background checks during the hiring process. It recently filed lawsuits against a BMW manufacturing facility and discount retailer Dollar General Corp. The agency alleges both employers discriminated against African American workers through their use of overly broad criminal background policies.

In April 2012, the EEOC released updated enforcement guidance on the proper use of arrest and conviction records by employers in employment decisions under Title VII of the Civil Rights Act of 1964 (Title VII). These are the first suits to enforce the new, more stringent guidelines.

As we previously discussed on this Business Law Blog, the EEOC guidance stressed that reasons to exclude individuals with arrest records must be job-related and based on business necessity. It also stated that employers should have a narrow screening policy that considers the nature of the job, the nature and gravity of the criminal conduct and the amount of time that has passed.

In the case against BMW Manufacturing Co., LLC, the EEOC alleges that BMW “disproportionately screened out African Americans from jobs, and that the policy is not job related and consistent with business necessity.” Rescreening of employees during a transition from one subcontractor to another under BMW’s blanket exclusion policy resulted in the termination of 70 African American employees, many of whom had worked for the company for over a decade.

In the case against Dollar General Corp., the EEOC alleges that Dollar General “conditions all of its job offers on criminal background checks, which results in a disparate impact against blacks.” In one case, the retailer fired an applicant, even though the conviction records check report showing a felony conviction was wrong. The EEOC said that although the Dollar General store manager was advised of the mistake in the report, the company did not reverse its decision and the firing stood.

As these enforcement actions make clear, employers should think twice before they refuse to hire someone with a criminal record without additional consideration of the business necessity of the hiring decision and the specific circumstances of the conviction.

If you have any questions about these cases or would like to discuss the legal issues involved, please contact me, Robert Levy, or the Scarinci Hollenbeck attorney with whom you work.