

## **EEOC issues new guidance memorandum on employee criminal records**

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**By Paul Ross**

On April 25, 2012, the U.S. Equal Employment Opportunity Commission (EEOC) issued a memorandum outlining its position on employer use of criminal records in the employment decision-making process. This new guidance both consolidates previous EEOC memorandums on the same issue and offers some new, expansive positions about what it considers to be potentially improper practices under Title VII. While the new guidance falls short of absolutely prohibiting the use of criminal background checks by employers, it is clear that employers with broad criminal background check policies may face EEOC scrutiny in the future.



The memorandum provides several important discussions that should be of interest to human resource professionals, including the standards applicable to disparate treatment claims and disparate impact claims. The memo also outlines the different standards applicable to arrest records as distinguished from conviction records and sets forth examples of employer conduct it would consider inappropriate. Finally, the memorandum sets forth what it considers to be “best practices” by employers who use criminal records.

While the memorandum sets forth a number of details, the key takeaway at this point is the EEOC’s position that employers should not have blanket policies excluding individuals from employment based upon criminal records. Instead, employers should establish policies that evaluate the individual circumstances of the position at issue and the particular offense.

Stay tuned for more on this guidance as it’s evaluated over the coming weeks. And, if you have concerns about your policies and/or practices when it comes to criminal background checks, please contact one of **McAfee & Taft’s employment law attorneys**.

## LINKS

- [Paul Ross' Bio](#)
- [McAfee & Taft's Labor and Employment Group](#)
- [EmployerLINC.com](#), McAfee & Taft's dedicated employment and employee benefits law blog
- [U.S. Equal Employment Opportunity Commission \(EEOC\)](#)
- [Release from EEOC: "Commission Updates Guidance on Employer Use of Arrest and Conviction Records"](#)

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