



Should Employers Consider Workers with a Criminal Record? A Look at Second Chances.

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You may be surprised to learn that there are millions of individuals with a prior criminal history living and working in society. They have served their time, have rehabilitated themselves and become productive members of society contributing to their communities instead of consuming limited resources.

According to federal Bureau of Justice statistics, nearly 700,000 individuals are released from state and federal prisons every year, and there are nearly 70 million people in the United States with a state criminal record(s) history - about 30 percent of the adult population.

There are countless examples of individuals who have made a mistake – and if we're honest – some are not minor crimes and then there's the matter of pattern behavior. After an individual is sentenced and fulfills their debt to society, then what? Should a past criminal deed prevent a person from obtaining gainful employment for the rest of their lives? The immediate answer that comes to mind is no – but it's not that simple because without deliberate consideration, the stigma around a criminal history may be the basis for employers to decide that person doesn't have a place within their organization, regardless of how long ago it occurred or rehabilitation efforts.

What happens if we create a segment of our population who, due to their past, cannot get a job and are unable to support themselves and their families? One reality is the likelihood that they will re-offend or may forever be a consumer of social programs like welfare -both are endless cycles that are not ideal for our society.

Under the Obama administration, the introduction of the Fair Chance Business Pledge sought to break this cycle and challenged businesses to allow individuals with criminal records, including formerly incarcerated individuals, a fair chance to participate in the American economy. Under his administration, a ban the box law was passed that prevents the federal government from asking job applicants about their criminal history until after a conditional job offer is made.

More recently, the First Step Act, a criminal justice reform law, was passed under the Trump administration. The law takes steps to ease what has been viewed as very punitive prison sentences at the federal level. It only affects the federal prison system, which currently has approximately 181,000 individuals imprisoned, but may serve as model legislation for states which could impact the 2.1 million people who are currently serving sentences in U.S. jail and prisons. The law takes steps to ease mandatory minimum sentencing requirements under federal law such as the "three strikes" rule that mandates certain sentencing minimums. Overall, the law would lead to shorter prison sentences for the future and takes steps to encourage rehabilitation programs in prisons to affect a reduction in the term of sentences.

While it may seem unlikely for the background screening industry to support second-chance efforts, our company and many other firms agree that individuals with a prior criminal history should not be prevented from having gainful employment. We believe in the thoughtful consideration of all aspects of a person's background, but, that there should be a job for every person. I have personally attended a number of second chance events and have heard the stories of employers who have embraced a second chance program within their organization.

The employers reported that “restored citizens” within their companies have outperformed workers with no criminal history. They report that those individuals are more committed because they recognize that the company took a chance on them and that if they lose this opportunity to work, the next one might not be so easy to find. I was moved to tears by some of the laid bare accounts of workers with children who were trying to get out of bad situations who recognized their past mistake and were desperate for a second chance to redeem themselves and to be able to support themselves and their families.

Employers absolutely have both the right and obligation to protect their assets, employees and their customers from both financial and physical harm, but doing so in a way that is fair and equitable to job seekers is important.

What You Can Do

Follow the EEOC’s Guidance on the Use of Criminal Records in Hiring Decisions

Employers should follow sensible procedures in considering the past conviction records of job applicants, in line with the U.S. Equal Employment Opportunity Commission’s (EEOC) 2012 guidance and ensure factors such as the nature and gravity of the offense, the time since it occurred and how it relates to the job being held or sought are considered. A criminal history used to disqualify an individual should have a direct connection to a discernable risk to the business before it is used to exclude a person.

Provide the Opportunity for an Individualized Assessment

The guidance provides that individuals being disqualified based on a criminal record should be offered the opportunity for an individualized assessment after the above-mentioned factors have been applied and the applicant is still disqualified. The individualized assessment gives the candidate an opportunity to provide additional information and details about their criminal history for the employer to consider such as age when it occurred, the total number of prior offenses, rehabilitation efforts and evidence that they performed the same type of work post-conviction without any problems.

Providing a fair review of qualifications and background, then, following non-discriminatory practices will enable employers to protect their interests and the interests of those they serve, without excessively burdening applicants for past mistakes.

Review Your Policy & Consider Taking the Pledge

Employers should not automatically reject an applicant just because they have a criminal record. Brightline policies that automatically reject a candidate because they have a criminal record are vanishing and, potentially, an illegal practice.

There are fair chance initiatives and laws everywhere you look. A movement is underway that recognizes that the best person for the job may be an individual who has a prior criminal record. We applaud companies who want to make their communities a better place and who embrace the concept of a second chance.



ABOUT THE AUTHOR

A subject matter expert with over 27 years of experience, Dawn Standerwick has extensive knowledge in all facets of workforce screening while specializing in background screening, drug testing, occupational health testing, and related HR technologies. She has served the industry’s trade association in leadership positions and the organization’s Chairperson in 2017. Before joining ESR, Dawn held senior positions in the screening industry as Vice President of Operations, Vice President of Sales and Marketing and Vice President of Business Development.