

*The U.S. Equal Employment Opportunity Commission*

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*EEOC staff members wrote the following advisory letter in response to an inquiry from a member of the public. The [letters](#), which are informal discussions of the issues, do not constitute official opinions of the Commission.*

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## **Title VII Arrest & Conviction Records**

December 1, 2005

Dear

Your e-mail to the Equal Employment Opportunity Commission (EEOC) National Contact Center concerning your company's background checks has been forwarded to the EEOC Office of Legal Counsel for response. Specifically, you requested a copy of EEOC Decision No. 72-1460. This decision, dated September 30, 1976, concerned whether the use of arrest or conviction records in hiring decisions violated Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e *et seq.*, and has been overruled. Accordingly, this letter instead will discuss current law and EEOC policy with respect to using arrest and conviction records in hiring decisions.

The EEOC is responsible for enforcing Title VII, which prohibits discrimination against applicants and employees on the basis of race, color, sex, religion, or national origin. Title VII does not forbid an employer from requiring applicants to provide information about arrest or conviction records. See *Gregory v. Litton Systems Inc.*, 472 F.2d 631 (9th Cir. 1972) (finding unlawful discrimination from employer's policy of disqualifying any applicant with an arrest record, but denying injunctive relief to forbid the employer from continuing to collect such information). Further, "refusing to hire an employee who falsifies an inquiry concerning his conviction record on the employment application is not a violation of Title VII." EEOC Decision No. 80-26, 26 Fair Empl. Prac. Cas. (BNA) 1810 (Sept. 11, 1980) (overruling EEOC Decision No. 72-1460).

If an employer chooses to collect arrest or conviction information, it must do so consistently. Obtaining criminal records in an inconsistent manner, based on the race, color, religion, national origin, or sex of the applicant, is unlawful under Title VII. For example, it would be unlawful for an employer to only require background investigations of applicants who were born in the Middle East or are Muslims. See Questions and Answers About Employer Responsibilities Concerning the Employment of Muslims, Arabs, South Asians, and Sikhs, available at [www.eeoc.gov/facts/backlash-employer.html](http://www.eeoc.gov/facts/backlash-employer.html); see also EEOC Compliance Manual, *National Origin Discrimination*, Sec. 13, Part III.B.1. (Dec. 3, 2002), available at <http://www.eeoc.gov/policy/docs/national-origin.html>.

When an employer asks employees or applicants about their arrest or conviction history, the EEOC suggests that it assures applicants and employees that honestly providing such history will not automatically disqualify them from consideration for the position. See EEOC Decision No. 80-26, n. 2. This is because "blanket" policies that bar the

employment of any applicant with a history of arrest or convictions usually are unlawful under Title VII; such policies often disproportionately exclude members of certain racial or ethnic groups.

If minorities are disproportionately affected by policies concerning arrest or conviction records, the employer may maintain its policy only if it can prove a business need. In very rare cases, courts have found that an employer had a business need for a blanket disqualification to hiring decisions for particularly sensitive positions. *See McCraven v. City of Chicago*, 109 F. Supp. 2d 935 (N.D. Ill. 2000) (use of arrest records to *per se* disqualify applicant for police officer position is lawful because of the "awesome responsibilities" of law enforcement). Generally, however, such decisions must be made by considering whether a particular applicant should be excluded from a particular job based on:

- The nature and gravity of the offense;
- The time since the conviction and/or completion of the sentence; and
- The nature of the job held or sought.

The attached documents discuss these factors in more detail. Please note the discussion of the additional inquiries necessary when arrest records, as opposed to conviction records, are at issue.

I hope this information is helpful to you. Please note that this correspondence is only an informal discussion of the issues raised by you and does not constitute an official opinion or interpretation of the EEOC within the meaning of § 713(b) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-12(b).

Sincerely,

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*This page was last modified on May 10, 2006.*



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