

Myths About Employing Individuals with Criminal Records

More than 1 million North Carolinians have a criminal conviction, hundreds of thousands more have arrests that did not result in conviction. These individuals represent a cross section of the workforce and possess useful skills and qualifications.

Some myths are:

- Individuals with criminal convictions are high-risk: ***In fact, after a certain period of time depending on the crime, individuals with criminal convictions are less likely to commit a crime than the average person.***
- Individuals with criminal convictions are untrustworthy and not conscientious workers: ***In most cases, these individuals are eager and committed to making something of themselves; they feel they have something to prove and are loyal, hard workers. An individualized assessment of the individual and his or her criminal past is necessary to judge trustworthiness and conscientiousness.***
- Individuals with criminal convictions are uneducated: ***Many of these individuals have h.s. diplomas or GEDs, some have degrees from institutions of higher education. Many also have received vocational training while incarcerated.***
- Our company policy precludes hiring individuals with criminal convictions because of the type of work involved or legal restrictions: ***It is a common misunderstanding that certain professions and trade licenses bar people with criminal records. Refusal is determined by type of offense not by the existence of offense. In fact, it is often illegal to have a policy against hiring any individual with a criminal record.***

Employer Benefits

Work Opportunity Tax Credit:

Available to private employers who employ individuals with felony convictions hired within a year of conviction or incarceration. Employers can receive up to \$2,400 for each eligible individual. Information is available at www.doleta.gov/business/incentives/opptax/

Federal Bonding Program:

Provides insurance to employers willing to hire eligible individuals with criminal convictions. The bonds protect employers against money or property loss due to employee dishonesty, including theft, forgery, larceny, and embezzlement. Information is available at www.bonds4jobs.com/

With respect to individuals under supervision, employers receive the following benefits:

- **Mandatory Drug Testing:** Required for the majority of individuals under probation.
- **Condition to Maintain Employment:** Each individual under supervision has a standard condition to be employed or involved in an educational training program.
- **Probation Officer as a Resource:** Probation officers work together with employers to ensure job retention and success.

“There are no absolutes but I’ve generally found that when you hire someone who’s looking for one last chance to turn his life around, he’ll roll up his sleeves and give you everything he’s got.”

-John Shegerian
Electronic Recyclers International

Employer Guide to Hiring Individuals with Criminal Records



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ncjustice.org



triadworks.org/

Assessing a Criminal Record

It is impossible to produce a list of those convictions that should be taken into account, and those that should not. Assessing a conviction to make a reasoned judgment about risk is a fairly simple process. It involves checking a person's criminal history against the following criteria:

-How relevant is the offense(s) to the job being applied for?

-How long ago did the offense(s) occur?

-How many times has the person offended?

- What are the nature and seriousness of the offense(s)?

-What was the background context (drug dependency, homelessness, etc) in which the offense(s) was committed? Has that context changed?

-Was the offense(s) work related?

-What is the person's attitude regarding the offense(s)?

Certificates of Relief, Expungements, and Negligent Hiring

Negligent Hiring

North Carolina's courts recognize a tort claim for negligent hiring where an employer is negligent in placing a person with known propensities, or propensities which should have been discovered by reasonable investigation, in an employment position in which, because of the circumstances of employment it should have been foreseeable that the hired individual posed a threat of injury to others.

The six elements of a negligent-hiring claim are:

- the tortfeasor was an employee (EE) of defendant;
- the EE was unfit for employment;
- the employer knew or should have known that the EE was unfit;
- the plaintiff was injured by the EE's tortious act;
- the employer owed a duty of care to the plaintiff;
- the hiring of the EE was the proximate cause of the plaintiff's injuries.

Certificate of Relief

In 2011, the North Carolina General Assembly established Certificates of Relief which allow individuals with certain criminal convictions to overcome legal barriers to employment. Eligible individuals must demonstrate to a court that they no longer pose a risk to the public. In addition to relieving the individual of certain restrictions on occupational licensing, the certificates provide employers protections against negligent hiring liability. For more information please see here: ncsecondchance.org

Expungements

Opportunities for expungement in North Carolina are limited, but when an individual's criminal record is expunged that individual may truthfully say that he has not been convicted of a crime.

An expunged record may, in certain situations, still show up in criminal background checks conducted by for-profit companies. Employers may consider allowing individuals an opportunity to show evidence of the expungement if a discrepancy arises.

Federal Laws Relevant to the Consideration of a Criminal Record

Title VII of the Civil Rights Act of 1964

- Employers are prohibited from excluding individuals based upon record of *arrest(s) that never led to conviction* absent a business justification.
 - A "business justification" is demonstrated by showing that:
 - the applicant engaged in the conduct for which s/he was arrested; and
 - the conduct is both job-related and fairly recent.
 - EEOC guidelines require employers to provide applicants with an opportunity to explain their arrest records before they are disqualified from employment.
- An employer may only screen out persons based on their *criminal convictions* if business necessity exists. To establish "business necessity," the employer must show that the screen is responsive to at least the following 3 considerations:
 - the nature and gravity of the offense(s);
 - the time that has elapsed since the conviction and/or completion of the sentence; and
 - the nature of the job held or sought.
- For more info, please see here: www.eeoc.gov/laws/guidance/arrest_conviction.cfm

Fair Credit Reporting Act

The FCRA applies to criminal background checks. Accordingly, employers must satisfy five requirements if accessing background checks via a third party:

- Written disclosure
- Written authorization
- Certification to reporting agency of proper disclosure and authorization
- Provision of the report and notice of the intent to take adverse action
- Written notice to individual that decision not to hire is based on his or her criminal record

"I think our hiring practices make our company stronger because they show that our management is sensitive to the human condition. There's not a community in America that isn't suffering from drug, gang, and recidivism problems. People coming out of those situations without structure are going to go back to what they know, whether that's a gang or dealing marijuana or smoking crack. If every business owner hired just one person from the margins, it could make a world of difference within the community. Helping people get that second chance is our great opportunity and our great challenge."

"If you take the skills that got them into trouble in the first place, and use them for a legitimate business venture, everyone wins. I have seen scores of people with transferable skills put these skills to work in the business world."