



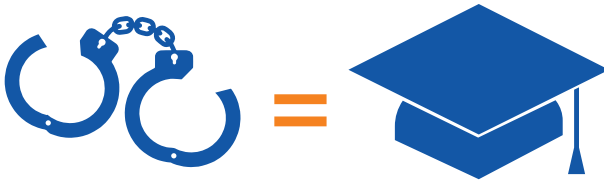
GUIDE FOR HIRING RETURNING CITIZENS

10/2019



FACTS ABOUT JOB SEEKERS WITH A CRIMINAL RECORD

As many Americans have
criminal records as college diplomas.



Brennan Center for Justice



Employment

is a significant factor in reducing re-offending.

EBP Society



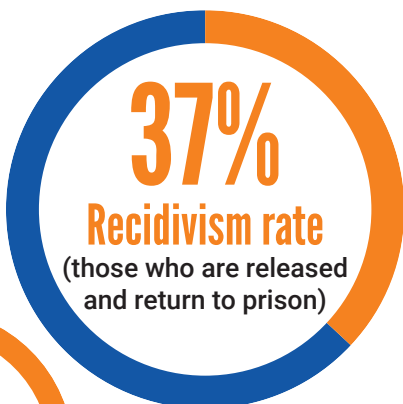
 **8,300**

people currently incarcerated and **95%** of them will eventually be released.

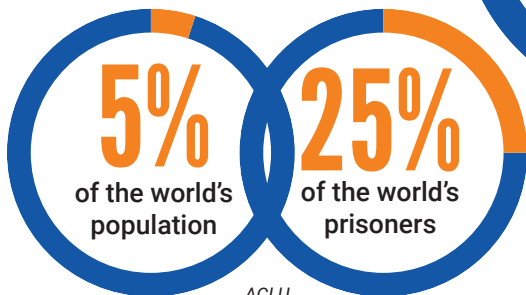
 **6,000**

incarcerated people released each year and approximately **1/3** of them return to central Iowa.

Department of Corrections

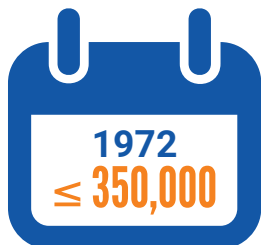


Bureau of Justice Statistics



ACLU

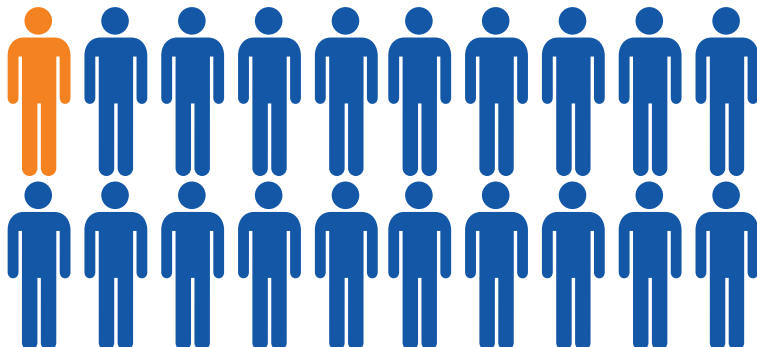
People being held in prisons and jails nationwide:



Defy Ventures

1 out of every 20

U.S. citizens will serve time in prison in his or her lifetime.



Bureau of Justice Statistics

WHY HIRE JOB SEEKERS WITH A RECORD?

→ They've already served their time.

Many people forget that job candidates with records have already served their sentence. In the eyes of the law, they were given a punishment for the crime and they did everything that was asked. Now most want to live a normal life.

→ You'll genuinely help someone.

People re-entering the workforce after serving time are in a really dark and difficult place that most of us may never understand. Every day, they face rejection in all facets of their life. Looking for a job? Looking for a place to live? Want to vote? In many cases, these rights have been stripped from them. By providing them a chance to work, you are giving them a rare positive moment and opportunity.

→ You'll help reduce crime.

Getting a job is crucial for an individual to re-integrate into our community after serving time and to reduce their chances of committing another crime.

→ You'll build a loyal workforce.

People with a record tend to be loyal to employers who are willing to hire them. Many are truly changed by being in prison. They have a much greater chance of succeeding on the outside when society is willing to accept them.

→ You could benefit from community services.

Most recent formerly incarcerated individuals are under the supervision of a parole or probation officer who can also be a contact person and resource for an employer. There are also community organizations who may be assisting people just released from prison and these can help address obstacles to employment, such as transportation and counseling.

→ They aren't as dangerous as you think.

When most of us hear the word "felony," we think of heinous acts committed by hardened criminals, thanks in part, to popular culture depictions. Sure, there are some dangerous people in the re-entry population. But for every one, roughly 1,000 others (many of whom have nonviolent convictions) are just looking for a second chance.

→ You could receive incentives.

There are incentives to employers who hire people with a record. Substantial tax credits are available for hiring persons with a record, such as the Federal Work Opportunity Tax Credit. Employers are also eligible to obtain a free fidelity bond funded by the federal government to protect them against employee dishonesty or theft.

RECRUITING AND HIRING PEOPLE WITH A RECORD



The “box” on a job application is a barrier for returning citizens because it has a chilling effect that discourages people from applying. Businesses should consider giving all applicants a fair chance, ensuring information regarding an applicant’s criminal record is considered in proper context, and engaging in hiring practices that do not unnecessarily place jobs out of reach for those with criminal records.

Employers can specifically commit to:

- Remove the check box** that asks if applicants have a criminal record from hiring applications.
- Include a statement on the application form** that says, “Criminal records do not automatically disqualify an applicant.” An employer may want to include a statement that says, “Falsification of any answers or any material omissions are grounds for discharge no matter when they are discovered.”
- Train human resources staff and hiring managers** on making fair decisions regarding applicants with criminal records.
- Require a release for a background check** in the application process. Have each applicant sign a consent form, including a check for criminal records, past employment, and education.
- Use reliable background check providers** to help ensure accuracy.
- Be consistent** in conducting criminal background checks to avoid an inference of discrimination against a certain racial or ethnic group.
- Delay the background check** at least until after the interview and preferably until a job offer has been made.



RECOMMENDATIONS

Criminal records should be a cause for rejection only if the nature and gravity of the offense(s), the time that has passed since the conviction and/or completion of the sentence, and the nature of the job held or sought would cause the applicant to be unsuitable for the position. If a person is showing a clear attempt at improving their life and the crime does not relate to the job they would perform, consider hiring them.

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:

- Relevance** of the offense to the job being applied for (For example, if the person was convicted of OMTI, a driving position might not be a good fit.)
- How long ago** the offense occurred
- How many times** the person has offended
- Nature and seriousness** of the offense
- Background** to the offense (For example, were circumstances such as drug addiction or homelessness present?)
- Person's attitude** regarding the offense (Do they accept responsibility for what they did?)
- What has the person done** since being convicted of the offense (For example, while in prison or on probation was job training, treatment, education received?)

Certain positions such as child care, education, health care, security, financial services, transportation, and government, may be subject to laws and policies that preclude the hiring of people with certain criminal records.

FAQs



The job applicant claims the record does not belong to him or her. What do I do now?

Contact the background check company and ask them to recheck the information provided. You can also check with the courts directly, since court records are more accurate than those provided by background check companies. If there is a match on the name, check whether other data – such as date of birth and social security number – also match. In addition, you should always give applicants the opportunity to prove that the record does not belong to them.

I don't understand the background check report. How do I read this thing?

Background check reports can be confusing to read. Moreover, each court system in the country has different practices, and each background check company reports this information in a different way. To minimize confusion, centralize the background check process, so that the person responsible for reading reports can learn how to read them correctly. If you are working with a service agency that places people with criminal records, that agency can help you understand the applicant's record. You can also ask the background screening company, the courts, or the job applicant for help in interpreting what the report means.

I am planning to deny employment based on the applicant's criminal record. Do I need to give the applicant a copy of the background check report beforehand?

Yes. If you are planning to make an adverse employment decision, such as denying employment or terminating an employee, based on criminal record information provided, you must provide a copy of the report to the job applicant before making that decision. This requirement is designed to allow job seekers to address any errors in the report. In addition, it gives you an opportunity to talk with the applicant about whether the applicant would be a good employee despite having a record.

With whom should I share information about an employee's criminal record?

Criminal record information is highly sensitive and should be shared only with those in the company who have a legitimate business reason to know that information. In addition, the Fair Credit Reporting Act, which covers background check reports, allows employers to get such reports only for employment purposes. To avoid liability for misuse of background check reports, you should limit access to employees' criminal record information.

What questions can I ask a job applicant?

You can ask whether an applicant has been convicted of a crime, and, if so, when, where and the nature of the offense. You may also ask if the applicant has any pending felony charges. However, you may not ask about arrests – felonies or misdemeanors – that did not result in conviction. In some cases, applicants have had their records sealed, meaning that the applicant's record is not available to the public. You cannot ask about sealed records.

At what point in the hiring process can I ask about an applicant's criminal history?

Legally, you can ask about an applicant's record at any point in the hiring process. Although employment practices vary, hiring managers are more often waiting until the end of the hiring process, and then make an offer contingent upon clearing a background check. This allows the employer to identify the best possible candidate for the job, and then determine whether that person's record, if any, is relevant to the position in question.

Do I need the applicant's permission to do a background check?

Yes, in most cases. Criminal record checks are covered by the Fair Credit Reporting Act, which requires written consent of the job applicant. Although there are some situations where consent may not be required, you should always get written permission before doing a check to protect your company.

How accurate are criminal background checks?

Criminal background checks are tremendously unreliable, because record matches are often based on little more than a name match. It is very common for a background check to show a record when the applicant does not have one or for a check to show no record when an applicant does have one. Many records do not contain up-to-date information, so a case may appear open when it is in fact closed. Reports frequently show the same conviction multiple times, making it appear that an individual has multiple convictions. Conviction information is often simply wrong. Never rely on a criminal background check without talking to the job applicant first.

FAQs

continued from previous page



My company won't hire anyone with a felony. Is that legal?

In most cases, no. In some industries there are laws that prohibit you from hiring certain individuals with criminal records. However, unless your company is required by law not to hire people with felony convictions, you should not have a policy against hiring this population. Because policies prohibiting the employment of people with criminal records have an adverse impact on people of color, such policies can violate anti-discrimination laws. The Equal Employment Opportunity Commission recommends that employers consider the nature and gravity of the offense, the time since conviction, and the nature of the employment tasks before disqualifying an individual from employment based on criminal background.

How do I protect my company against claims that we discriminate against people with records?

Employers who have a "no-felon" policy may be the target of discrimination lawsuits. To help protect your company, you should adopt a policy that looks at factors like the length of time since conviction, circumstances of the offense, number of convictions, employment record since conviction, rehabilitation, and nature of the job. You may want to ask only about more recent convictions, more serious convictions, or convictions related to the job for which they are being considered. In cases where you deny employment based on a person's criminal record, you may want to document that you have considered the factors listed above.

I need to fire someone who has a criminal record. How do I avoid a discrimination claim?

As in any case where you terminate an employee, you should document the basis for the termination. Because of equal opportunity laws, it can be illegal to fire someone simply because they have a criminal record. However, if an employee's job performance is unsatisfactory, you can terminate that employee because that employee has a criminal record.

What if the law says I can't hire people with records?

There are some industries – particularly long-term care, education, child care, and transportation – where laws and regulations disqualify some people with records from working in that industry. These rules are often very complicated and may include exceptions for people with a work history in the field, or may allow for an appeals process. Make sure that your human resources office understands exactly who is and is not eligible to work in your company.

Should I be concerned about negligent hiring lawsuits?

If an individual is being hired for a position that does not involve contact with the public – such as production work – negligent hiring is generally not an issue. If the position does involve contact with the public, courts say that because an employee has a criminal record does not establish a claim for negligent hire. Rather, the question is whether the employer used reasonable care in hiring. You can help protect your company by adopting a policy of considering convictions on a case-by-case basis. If you conduct criminal background checks, document that you have reviewed the results prior to hire and have concluded that the applicant is an appropriate hire for the position in question. Documenting reference checks is also helpful.

Will my insurance rates increase if I hire individuals with criminal records?

Insurance companies do not typically request this type of disclosure regarding employees, and therefore, it should not increase your rates. Insurance companies typically rate based on claims information.

Can I get free federal bonding for employees with criminal records?

Yes. Under the Fidelity Bonding Program, the federal government will issue free business insurance coverage against theft if you hire a job applicant with a criminal record. Bonds can be obtained instantly and last for six months.

Can I get a tax credit for hiring a person with a criminal record?

Yes. The Federal Work Opportunity Tax Credit provides up to \$2,400 in tax credits if you hire an individual who was convicted of a felony or released from incarceration within one year of the hire date.

For more information and resources, please visit:
WWW.CENTRALIOWAWORKS.ORG