

Using Criminal History Records to Make Personnel Decisions

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The Legal Landscape

- Use of, and access to, criminal history information is highly regulated
- EEOC Guidance complicates the landscape



Texas Law Basics

- Texas Gov't Code § 411.097 – allows school districts to obtain criminal history records from the Texas DPS regarding employees, volunteers, and others



- Texas Educ. Code § 22.083 & 22.0836 –school districts “shall” obtain criminal history information on certain employees and other individuals.
- Texas Educ. Code § 22.08391 – criminal history information is confidential



- TEXAS EDUC. CODE § 22.085
 - Prohibits employment of individuals who have been convicted of (i) a Title V felony under the Penal Code; (ii) an offense that requires registration as a sex offender; or (iii) or an equivalent offense under the laws of another state or federal law AND the victim was under 18 or was enrolled in public school



- Title V describes crimes against the person (*e.g.*, homicide, assault, sexual assault, kidnapping)
- This automatic exclusion does not apply if the offense is older than 30 years and the individual has completed all court requirements



EEOC Guidance

- In April 2012, the EEOC released enforcement guidance – *The Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964*



- Consolidates and updates previous EEOC guidance documents regarding use of criminal history information
- Available at www.eeoc.gov and attached to your materials



EEOC Guidance In a Nutshell

- African-American and Hispanics are arrested and convicted at rates that are disproportionate to their representation in the general population



- An employment policy that prohibits hiring applicants because of their criminal history may have a disparate impact based on race and national origin. Such policies may violate Title VII of the Civil Rights Act of 1964



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[Employment Issues on Campus: Federal and State Employment Law Update; Use of Criminal History; ADA and FMLA; plus On-the-Job Injuries](#)

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