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Austin, Texas****A Practical Review of the EEOC Enforcement Guidance on the
Consideration of Arrest and Conviction Records in Employment
Decisions Under Title VII of the Civil Rights Act of 1964****Leah Robertson**

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A Practical Review of the EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964

Texas school districts are subject to many, many, many federal, state, and local laws and regulations. Few of those laws and regulations can subject your district to liability. However, there are some areas of liability for school districts, and violating an employee's civil rights is a big one. The Equal Employment Opportunity Commission (EEOC) is a federal regulatory agency that investigates possible civil rights violations. In particular, the EEOC released an Enforcement Guidance regarding the use of arrest and conviction records when hiring or for the retention of employees on April 25, 2012. It is now February 2017! Why are we still talking about this? First, it is still a big deal! Second, how much turn over has your human resources department had since this guidance was released? Probably quite a bit; retraining is always a good idea and your district is likely making these types of hiring decisions on a daily basis. Third, not following this guidance could prove costly to your school district. I feel that one of the best ways to walk through the EEOC guidance is by asking and answering questions that can come up for every school district in Texas. So, let's begin our practical review of this guidance.

We are a Texas Independent School District, why does this guidance matter to us?

Well, whether you like it or not, federal law applies to your district and specifically Title VII of the Civil Rights Act applies to your district. Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin.¹ Since, federal law applies in your hiring of ALL employees and how you handle current employees who get involved with the criminal justice system, you need to take note of how to avoid violating this guidance.

¹ EEOC Enforcement Guidance No. 915-002, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, April 25, 2012, page 3.

But we live in a beautiful, blissful imaginary city in Texas where no one has a criminal record, so we are good right?

No, no you are not. Unfortunately, in reality hiring employees who have clean criminal histories is becoming harder and harder. If we just look at men, based on national incarceration data, the U.S. Department of Justice estimated in 2001 that 1 out of every 17 White men (5.9% of the White men in the U.S.) is expected to go to prison at some point during his lifetime. This rate climbs to 1 in 6 (17.2%) for Hispanic Men, and for African American men, the rate of expected incarceration rises to 1 in 3 (32.2%).² Assuming incarceration rates have remained unchanged since 2001, each one of these groups provides the potential that someone who works for your district, or has applied for work in your district, has a criminal record.

What am I even reading on these criminal history reports?

Typically on a criminal history report you will see a person's personal information (name, date of birth, addresses they have been linked to and a photo). If the person has been involved with the criminal justice system you should see their involvement. You should note that errors and incomplete records are possible in this system.

On a criminal history report, there should be an arrest date and any possible resolution to the arrest. Some possible resolutions that you could see are: dismissed, convicted, deferred adjudication, fine and costs, probation, and/or, a jail sentence. What do all of those terms mean?

- A. Dismissed – after an arrest, a prosecutor dismissed the charge. The reasons for a dismissal are varied, some examples are: an illegal stop, insufficient evidence and an affidavit of non-prosecution was filed.

² EEOC Enforcement Guidance No. 915-002, Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, April 25, 2012, page 10.

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