



Equal Employment Opportunity Commission (EEOC) Guidance on Criminal Background Checks

On April 25, 2012, by a vote of four to one, the U.S. EEOC issued an updated Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended (Title VII). This new Guidance supersedes the EEOC's prior policies on this topic and will impede the ability of employers to use criminal background checks to make informed hiring decisions, ultimately affecting their ability to protect the safety of people and property in workplaces across the United States.

Following the EEOC's review of arrest and incarceration rates in 2007, the Commission reached the conclusion that the use of criminal records and background checks in employment decisions is disproportionately negative for certain minorities, and thus decided to reevaluate its policy. Essentially, the new Guidance forces employers to perform "validation studies" to prove that employment decisions made based on criminal background information are job-related and consistent with business necessity. These costly studies are not required under existing law. Employers who lack the financial means to employ such studies will simply decide not to perform the checks.

Furthermore, there is no exception for complying with state laws. Existing or prospective employees would be told that they were screened out because of a criminal conviction, creating the potential for significant legal liabilities for employers. The likely result of this Guidance will be more employers not using criminal background checks because of the increased risks of being sued under Title VII or facing costly investigations by the EEOC.

As the EEOC finalizes its plans to issue another similar guidance on the use of credit checks in employment decisions, we urge Congress to address these concerns immediately. The 29,000 U.S. members of ASIS International, including nearly 200 in Nevada, believe that credit and criminal background checks are an essential tools in protecting employees, customers and the public from workplace violence, fraud and theft. This is an area of significant interest for employers in virtually all industries. A reduction in background checks is a threat to public safety.