

Hot Topic: The Use of Criminal Records to Make Hiring Decisions

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Medical testing giant Quest Diagnostics Inc. (42,000 employees worldwide) recently found out the hard way that government agencies across the country are ramping up enforcement of state and federal laws restricting the use of criminal convictions when making hiring decisions. While the **Equal Employment Opportunity Commission (EEOC)** uses Title VII's prohibition against disparate impacts against employees relating to race or national origin to investigate companies' hiring policies in relation to criminal records, many states, such as New York, have laws specifically limiting the use of such records when making hiring decisions.

Here, Quest settled with the New York Attorney General's Office after a probe found that the company automatically disqualified applicants with a criminal history or deemed them ineligible for hire. A Quest subsidiary, ExamOne Worldwide Inc., whose paramedical examiners travel to the homes of its patients to provide certain medical services, was also found to have run afoul of New York law by refusing to hire applicants who had a criminal conviction within the previous seven years.

Much like the EEOC's insistence on an individualized inquiry, New York law requires employers to consider such factors as the nature and gravity of an applicant's criminal conviction, its relationship to the specific job responsibilities of the position in question, how much time has passed since the conviction, the age of the applicant when the offense was committed, and evidence of rehabilitation. As a result of the investigation, Quest agreed to modify its practices and policies to comply with the law, train its employees, pay a \$70K penalty, preserve hiring records and complaints about hiring decisions, and provide compliance reports.

This matter serves as a stern reminder that companies may need to revisit their practices and policies regarding the use of criminal histories when making hiring decisions. Since its release of new enforcement guidelines in April 2012 on the subject, (available [here](#)), the EEOC has made this issue a priority in its investigations. Employers, who can sometimes find themselves on the horns of a dilemma – wanting to comply with criminal history laws on one hand while trying to avoid hiring employees that might put them in the crosshairs of a negligent hiring/supervision case on the other – should consult with experienced employment counsel to assist in navigating these concededly tricky waters.

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