



U.S. Equal Employment Opportunity Commission

PRESS RELEASE
4-25-12

EEOC Issues Enforcement Guidance

Commission Updates Guidance on Employer Use of Arrest and Conviction Records

WASHINGTON — The U.S. Equal Employment Opportunity Commission (EEOC) today issued an updated [Enforcement Guidance on employer use of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964](#), as amended (Title VII). The Commission today voted 4-1 to approve the guidance document. The Commission also issued a [Question-and-Answer \(Q&A\) document](#) about the guidance. The Enforcement Guidance and Q&A document will be available on the EEOC's website at www.eeoc.gov.

"When the Commission met publicly to discuss this subject in July, 2011, I said that I hoped the meeting would help to inform the Commission's consideration of revisions to existing EEOC guidance. We had excellent testimony from two public meetings and hundreds of written comments submitted by a diverse group of commenters to inform our deliberations concerning the new guidance," said EEOC Chair Jacqueline A. Berrien. Chair Berrien added, "The new guidance clarifies and updates the EEOC's longstanding policy concerning the use of arrest and conviction records in employment, which will assist job seekers, employees, employers, and many other agency stakeholders."

While Title VII does not prohibit an employer from requiring applicants or employees to provide information about arrests, convictions or incarceration, it is unlawful to discriminate in employment based on race, color, national origin, religion, or sex. The guidance builds on longstanding guidance documents that the EEOC issued over twenty years ago. The Commission originally issued three separate policy documents in February and July 1987 under Chair Clarence Thomas and in September 1990 under Chair Evan Kemp explaining when the use of arrest and conviction records in employment decisions may violate Title VII. The Commission also held public meetings on the subject in 2008 and 2011. The Enforcement Guidance issued today is predicated on, and supported by, federal court precedent concerning the application of Title VII to employers' consideration of a job applicant or employee's criminal history and incorporates judicial decisions issued since passage of the Civil Rights Act of 1991. The guidance also updates relevant data, consolidates previous EEOC policy statements on this issue into a single document and illustrates how Title VII applies to various scenarios that an employer might encounter when considering the arrest or conviction history of a current or prospective employee. Among other topics, the guidance discusses:

- How an employer's use of an individual's criminal history in making employment decisions could violate the prohibition against employment discrimination under Title VII;
- Federal court decisions analyzing Title VII as applied to criminal record exclusions;
- The differences between the treatment of arrest records and conviction records;
- The applicability of disparate treatment and disparate impact analysis under Title VII;
- Compliance with other federal laws and/or regulations that restrict and/or prohibit the employment of individuals with certain criminal records; and
- Best practices for employers.

The materials for the public meetings held on the use of arrest and conviction records, including testimony and transcripts, are available at <http://eeoc.gov/eeoc/meetings/index.cfm>.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at www.eeoc.gov.