

Individualized Assessment Of Criminal Record

Individualized assessment generally means that an employer informs the individual that he may be excluded because of past criminal conduct; provides an opportunity to the individual to demonstrate that the exclusion does not properly apply to him; and considers whether the individual's additional information shows that the policy as applied is not job related and consistent with business necessity.

Generally an employer will begin the evaluation process by considering the traditional considerations:

- 1) Nature and seriousness of the offense;
- 2) Amount of time since the conviction/release from confinement;
- 3) How the offense relates to the job.

The new considerations consist of:

- Is the criminal report is accurate;
- The facts or circumstances surrounding the offense or conduct;
- The number of offenses for which the individual was convicted;
- Older age at the time of conviction, or release from prison [EEOC cites studies that the older the offender, the less likely he is to re-offend];
- Evidence that the individual performed the same type of work, post conviction, with the same or a different employer, with no known incidents of criminal conduct;
- The length and consistency of employment history before and after the offense or conduct;
- Rehabilitation efforts, e.g., education/training;
- Employment or character references and any other information regarding fitness for the particular position; and
- Whether the individual is bonded under a federal, state, or local bonding program.

If the individual does not respond to the employer's attempt to gather additional information about his background, the employer may make its employment decision without the information.

An employer cannot act upon the mere fact that a person has been arrested. An employer can inquire about the facts leading up to the arrest and make a determination of whether the person was engaged in criminal activity and then evaluate that conduct as outlined above.