

## EEOC: CRIMINAL BACKGROUNDS CANNOT BE USED AS AN EXCUSE TO REJECT APPLICANTS



Concerned that the use of criminal background checks, prior to hiring, by employers has a negative impact on migrants and that it was discriminatory and had the potential to be misused, the US Equal Employment Opportunity Commission has issued new guidelines. The aim is to ensure that the law cannot be misused to prevent minorities from being hired, since they have a higher rate of conviction, compared to the white population. According to the National Employment Law Project, around 90 percent of employers conduct criminal background checks and use the information as criteria to disqualify job applicants. The EEOC has recommended that employers stop asking about past convictions on job applications and that an arrest without a conviction will not be considered a genuine reason for refusing employment. The EEOC said that although it was okay for employers to check a prospective employee's criminal records, it could be considered unfair and discriminatory if he were not hired on the basis of an arrest or a conviction. The commission has asked employers to conduct an individualized assessment of the applicant's criminal record and it would be considered a violation of the law, if they failed to prove that disqualifying an applicant was "job related and consistent with business necessity." Employers are asked to seek explanations for their records of criminality, before outright rejection. An applicant might refute his criminal record as being inaccurate, or that he was a victim of circumstances or that he has since reformed himself. Pamela Devata, a Chicago employment lawyer who has represented companies that comply with EEOC's rules said that, "It's going to be much more burdensome. Logistically, it's going to be very difficult for employers who have a large amount of attrition to have an individual discussion with each and every applicant." The EEOC investigates all claims of discrimination on this ground very seriously and is currently investigating over 100 claims of job discrimination based on criminal background checks. Pepsi Beverages Co., found guilty of racial discrimination and of using criminal background checks to disqualify applicants, settled charges by paying \$3.1 million. In a written statement, EEOC Chair Jacqueline Berrien said, "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." Some employers feel that the new policy is not conducive to making proper assessments. Refusing to hire an individual owing to his past criminal record is a way to keep the work environment and other workers safe and keep anti-social elements out. EEOC member Chai Feldblum said, "You thought prison was hard, try finding a decent job when you get out." Stuart Ishimaru, one of three Democrats on the five-member commission said that the "The ability of African-Americans and Latinos to gain employment after prison is one of the paramount civil justice issues of our time." NAACP President Benjamin Todd Jealous said in a statement, that the " Equal Employment Opportunity Commission's decision will help balance the playing field for job applicants with a criminal history. Our criminal justice system is deeply biased against people of color, and that disparity can carry over to the job search. These guidelines will discourage employers from discriminating against applicants who have paid their debt to society."