

San Antonio Criminal Justice Action Coalition

To educate and engage the public on the issue of mass incarceration in an effort to bring about fundamental reform of our justice system

EMPLOYMENT & REDEMPTION: Unreasonable Job Barriers

Equal Employment Opportunity Commission (EEOC) Gets Involved

In January 2012, the EEOC announced that Pepsi Beverages agreed to pay \$3.13 million based on a finding of reasonable cause that Pepsi's criminal background check policy discriminated against African American applicants. Pepsi's former policy disproportionately excluded Black applicants from employment based on arrests for certain minor offenses even if they had never been convicted. The use of arrest and conviction records to deny employment can be illegal under Title VII of the Civil Rights Act of 1964 when it is not relevant to the job.

"When employers contemplate instituting a background check policy, the EEOC recommends that they take into consideration nature and gravity of the offense, the time that has passed since the conviction and/or completion of the sentence, and the nature of the job sought in order to be sure that the exclusion is important for the particular position." (EEOC Press Release, January 11, 2012)

The following statistics help clarify why the EEOC determined that such hiring policies were racially discriminatory. According to the 2010 U.S. Census, Blacks made up 12% of the population, Hispanics made up 16%, and Whites made up 64%. The racial breakdown in U.S. state and federal prisons as of December 31, 2012, however, paints a very different picture. 37% of the inmates were Black, 22% were Hispanic and 33% were White. (E. Carson & D. Golinella, Bureau of Justice Statistics, December 19, 2013)

How Long Does Redemption Take

"In 2010, the Chicago Public Schools declined to hire Darrell Langdon for a job as a boiler-room engineer, because he had been convicted of possessing a half-gram of cocaine in 1985, a felony for which he received probation. It didn't matter that Mr. Langdon, a single parent with two sons, had been clean since 1988 and hadn't run into further trouble with the law." (A. Blumstein & K. Nakamura, The New York Times, January 9, 2012) Only after The Chicago Tribune reported on this situation did the employer reverse and offer the job.

For a variety of reasons (e.g., expanded labor pool, GDP, tax base), a growing number of citizens have expressed a desire to see more job opportunities for those ex-offenders who have remained crime-free for a reasonable period of time. Many researchers have shown that recidivism drops steadily over time, but until recently there was little solid evidence to determine how much time was reasonable. Escalating arrest rates for young adults (often for drug offenses) combined with greater access to arrest records have resulted in a steady drop in employment options for these individuals.

Blumstein and Nakamura undertook a research project that tracked 88,000 people arrested in 1980 for the following 25 years. They compared the results with citizens of the same age who had never been previously arrested. The

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important research revealed that there is indeed a reasonable period of time after which an ex-offender should be considered “redeemed”. They came up with “hazard rates” that revealed the probability that someone would re-offend based on offense type and age. The hazard rate for 18-year olds arrested for burglary declined to that of the general population in 3.8 years; for aggravated assault in 4.3 years; and for robbery 7.7 years. (Redemption, NIJ Journal, No. 263, pp. 10-16, 2009)

State Responses

Some states have taken steps to limit access to criminal records that they have determined to no longer be meaningful. For example, Massachusetts has taken the well-reasoned step of limiting the employers’ access to conviction information after what they determined was an appropriate period - ten years for felonies and five for misdemeanors. “The new law protects employers from due-diligence liability suits if someone they hire in accord with these restrictions commits a further offense.” (A. Blumstein & K. Nakamura, The New York Times, January 9, 2012) As of April 2014, there were 27 states in which cities had “Banned the Box” or required that conviction history questions were removed from job applications. Texas was one of the states, but Austin was the only city to do so. (National Employment Law Project)

Texas on the other hand has taken a much different approach. The state sued the EEOC over the guidelines they provided in 2012 regarding the use of criminal histories when making hiring decisions. The lawsuit contends that the EEOC is infringing on the sovereign authority of Texas to impose blanket bans on hiring convicted felons in certain positions and is creating a safety hazard. The complaint further contends “If state agencies choose to comply with the EEOC’s interpretation, they not only violate state law, but also must rewrite their hiring policies at taxpayer expense.”

One in three adults has a criminal record (U.S. Dept. of Labor, No. 306, January 29, 2013) and these records are readily accessible. Coupled with a tolerance for hiring policies that permanently disallow employment consideration for felons, this has created a barrier to full restoration of citizenship for those who have paid the price for their crimes. In many cases, such hiring practices also apply to those who were arrested but were never convicted. Under the guise of public safety, these unforgiving hiring policies have damaged our economy, a vast number of our citizens and our sense of earned redemption. Enough is enough. It is time to develop common-sense hiring policies that recognize actual “hazard rates” and tolerance for risk based on the type of job and consumers that come into contact with employees.

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