

**ONE IN THREE AMERICANS HAVE SOME FORM OF CRIMINAL RECORD.** Employers will continue to see an increasing number of job applicants with criminal records as these individuals return home to our communities. Navigating this new normal can be difficult for even the most seasoned human resource HR professional. However, many leading employers have already committed to fair chance hiring and have accessed this largely untapped talent pool.

Here are several open and fair hiring practices employers can choose to adopt based on their unique business needs:

▶ **REMOVE COMPANY POLICIES AGAINST HIRING A PERSON WITH A CRIMINAL RECORD**

It is a violation of Title VII to reject applicants because of criminal records unless it is job related and consistent with business necessity. The EEOC has successfully sued several employers for blanket exclusions of people with criminal records.

▶ **DON'T ASK ABOUT CRIMINAL RECORDS ON APPLICATION FORMS**

Wait until later in the application process to consider criminal records. This will help the hiring committee remain unbiased as long as possible. In many jurisdictions, including the City of Los Angeles, Ban-the-Box laws make it illegal to ask about criminal records on the job application. As a result, a number of the country's biggest employers, such as Starbucks, Target and Walmart have already removed the question.

▶ **USE A RELIABLE BACKGROUND CHECKING COMPANY**

Background checking companies, also known as consumer reporting agencies (CRA), often contract with employers to conduct background checks on job applicants. In a large and diverse industry, the quality can vary significantly. No license is required to become a CRA, and there are almost no legally required quality standards.

In order to make informed decisions, an employer must know how to select a CRA that will provide

accurate and reliable reports. Here are the criteria for determining whether a prospective CRA is reliable:

- ▶ Verify that the prospective CRA is accredited with the National Association of Professional Background Screeners (NAPBS), the trade association for background check companies.
  - ▶ The CRA should confirm all information from secondary sources with the original criminal justice source.
  - ▶ The CRA should require that full name and at least one other identifier match.
  - ▶ The CRA should only report matches when all available identifiers match.
  - ▶ The CRA should perform regular independent audits of its research agents and processes.
- ▶ **FOLLOW THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION GUIDELINES.**
- ▶ Do not consider arrests – only convictions. The fact that a person has been charged with a crime does not mean he or she is guilty. The EEOC considers it a violation of Title VII of the Civil Rights Act to disqualify an applicant for an arrest for which he or she was not convicted.
  - ▶ Consider the nature of the job and the nature of the crime. When compiling a job description, take

the time to consider which offenses would preclude someone from properly executing the responsibilities of the job and only consider those offenses in the background check.

- ▶ Consider the time that has passed. California law bars CRAs from reporting a criminal record that occurred more than seven years ago. Studies show that over time, individuals with criminal records become less likely to reoffend.
- ▶ Do not collect irrelevant information. A criminal conviction carries a stigma that HR professionals can't ignore. Tell CRAs to report only convictions you consider relevant to the job in question.

### ▶ ENSURE (HR) MANAGERS ARE EXPERIENCED WITH CRIMINAL RECORDS

An individual's criminal record might be confusing to someone without prior knowledge of the criminal justice system. Johns Hopkins Hospital, a leading fair chance employer, employs a former Baltimore police officer to review criminal records with HR staff to better understand the nature of the crime. Other employers have trained HR staff on hiring individuals with criminal records.

### ▶ HAVE A CONVERSATION WITH THE CANDIDATE ABOUT THE CONVICTION

Before deciding an individual's criminal record precludes him/her from moving further in the application process, ask for an explanation of the record. Providing the applicant with an opportunity to explain the situation will help the employer understand how that applicant would approach a similar situation in the future. Depending on local Ban-the-Box legislation, this conversation might have to wait until a conditional offer of employment.

### ▶ CONTRACT WITH SUPPLIERS THAT ARE SOCIAL ENTERPRISES/TRANSITIONAL EMPLOYERS FOR THE FORMERLY INCARCERATED

If your company is unable to be the employer of record for individuals with criminal records, you can contract with a vendor known to hire individuals with barriers to employment. Often known as social enterprises or transitional employers, these organizations provide business-to-business services for clients and crucial skill-building experience for individuals traditionally kept out of the workforce.

### PARTNER WITH A SOCIAL ENTERPRISE, PUBLIC

### ▶ AGENCY, LOCAL WORKFORCE DEVELOPMENT ORGANIZATION OR COMMUNITY-BASED ORGANIZATION TO CONNECT TO A POOL OF WORK-READY CANDIDATES WITH PAST JUSTICE INVOLVEMENT

For employers interested in accessing this untapped talent pool, there are a number of organizations that can help you. The Chamber would be happy to connect you to an appropriate organization.

### DEVELOP A DIVERSITY POLICY

- ▶ A strong diversity policy extends to differences in personal backgrounds and experiences. Studies show racially diverse companies outperform industry norms by 35 percent and gender-diverse companies are 15 percent more likely to have better financial returns.

- ▶ Learn about reducing implicit bias in hiring decisions.

- ▶ Create employer resource groups for different communities within your workforce.

### ▶ DEVELOP A COMMITTEE RESPONSIBLE FOR THE FINAL HIRING DECISION WHEN AN APPLICANT HAS A CRIMINAL RECORD

A leading fair chance employer developed a diverse review committee responsible for reviewing all relevant information and making the final hiring decision when an applicant has a criminal record. This process reduces the possibility that an individual's unconscious bias will impact the final decision and provides transparency and integrity in your hiring process.

### ▶ KEEP CRIMINAL HISTORY CONFIDENTIAL AND DO NOT SHARE IT WITH THE HIRING MANAGER

To minimize unconscious bias, only share an applicant's criminal record on a need-to-know basis.

For more information, please contact Gerry Feeney, 213.580.7564 or [gfeeney@lachamber.com](mailto:gfeeney@lachamber.com).

You can also check out these Chamber-recommended resources, that contributed to this document:

- ▶ National Workrights Institute: Lewis Maltby, [Lmaltby@workrights.org](mailto:Lmaltby@workrights.org)
- ▶ Root & Rebound: Legal Hotline 510.279.4662 or [info@rootandrebond.org](mailto:info@rootandrebond.org)
- ▶ CA Employers' Fair Chance Hiring Toolkit