

What Employers Need to Know: 5 Essential Elements for Fair Hiring

Hiring new employees is a critically important function in any business, government agency, or non-profit organization. Every hiring decision represents a major investment that employers must make with limited information. Checking criminal history is just a small part of this process, which may also include verifying education, prior employment and other reference information. There are five essential elements of the Best Practice Standards that ensures an employer implements a fair hiring policy that gives every candidate a fair opportunity to compete for work.

(1) Know What Convictions Are Relevant to Risks of Harm in the Job Setting

- » **Consider Only Convictions That Are Relevant to the Job in Question.** The employer should identify the types of risks presented by the job situation and screen for convictions associated with those risks (e.g., screening CFOs for embezzlement or other theft convictions, drivers for DUIs).
- » **Consider Only Convictions Recent Enough to Indicate Present Risk.** Employers should set a cut-off time that reflects available evidence; many studies find the risk of repeat offending is negligible after 3, 5, or 7 years.



(2) Ask About Qualifications First

- » **Do Not Ask About Criminal Records on Initial Application Forms – Ask Later.** Obtain information on the qualifications rather than automatically excluding a potentially valuable candidate based on assumptions or stereotypes about character.



(3) Use Reliable Methods to Perform Background Checks – Don't Just Seek Low Cost

- » **Engage a Qualified Consumer Reporting Agency (CRA) That Will Know the Law and Report to the Employer:**
 - Only convictions that are relevant and recent
 - Only when full name and another identifier match the candidate
 - Information from online databases confirmed with original source
 - Current disposition of information confirmed from official source
 - All charges related to a single incident shown as a single entry
- » **Always Provide the Applicant the Opportunity to Challenge the CRA's Report Before a Decision Is Made.**

(4) Consider All Evidence Relevant to an Individual Applicant's Rehabilitation

- » **Consider All Evidence of Rehabilitation.** People change and become good citizens and good employees. An applicant, even with relevant convictions recent enough to be of concern, should not automatically be rejected. Instead, he or she should be given the opportunity to present evidence of rehabilitation – experience performing a similar job successfully, completion of training programs or educational advancement – that signal rehabilitation efforts the employer should carefully consider before making a decision.

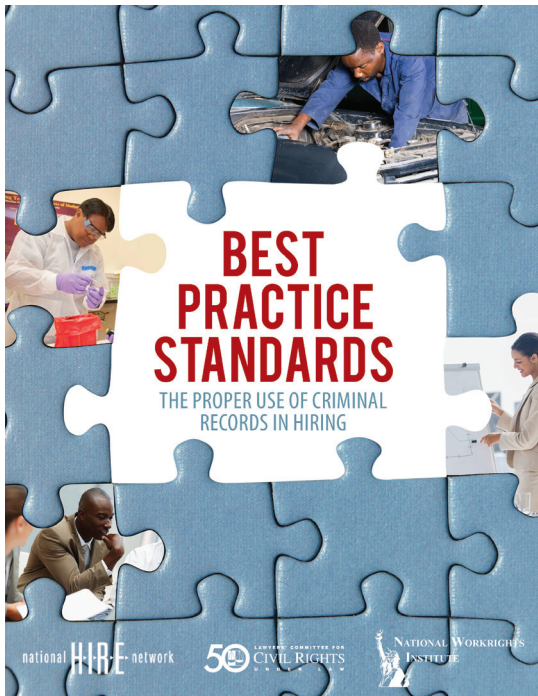


(5) Design the Hiring Process to Implement Best Practices Effectively

- » **Train Human Resources Staff.** Hiring managers should know federal and state law and the practical steps in determining if and how a criminal history may be relevant. HR employees who manage background screening should be thoroughly trained and regularly updated on relevant federal, state and local laws and in how to apply elements 1 – 4 in hiring of all candidates.
- » **Minimize Conflict of Interest by Decision Makers.** Hiring decisions should be assigned to managers who can make informed and thorough assessments of candidates, while limiting the employer's exposure to unreasonable risk. The employer's diversity policy should effectively communicate the company's commitment to equal opportunity and fair hiring for all qualified candidates, even those who may have past justice-involvement.



Best Practice Standards for Use of Criminal Records in Employment



The report, *Best Practice Standards: The Proper Use of Criminal Records in Hiring* provides employers a guide to complying with the complex and competing requirements of Title VII of the Civil Rights Act of 1964, the Fair Credit Reporting Act, and avoiding liability for negligent hiring. The Best Practice Standards also help employers make informed decisions when dealing with applicants with criminal records. Find this report online at BestPracticeStandards.lawyerscommittee.org. Direct inquiries to lacinfo@lac.org or info_bestpractices@lawyerscommittee.org.

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