
Understanding The New Department Of Labor Civil Rights Guidelines Governing Criminal Background Checks and Federally- Funded Workforce Development Programs

Webinar
July 18, 2012

Presenters: **Jane Oates**, Assistant Secretary, Employment Training Administration, U.S. Department of Labor
Naomi Barry-Peréz, Director, Civil Rights Center, U.S. Department of Labor
Laura Moskowitz, Office of the Solicitor, U.S. Department of Labor
Maurice Emsellem, Policy Co-Director, National Employment Law Project
Charles Turner, Adult Career Services Re-Entry Manager, Oakland
Private Industry Council, Inc.

**Audio is only available through telephone. Please use conference call number provided via email or in control panel.*





Jane Oates

Assistant Secretary, Employment Training Administration,
U.S. Department of Labor

Jane Oates was confirmed as Assistant Secretary for Employment and Training on June 19, 2009. She now leads the Employment and Training Administration (ETA) in its mission to design and deliver high-quality training and employment programs for our nation's workers. Prior to her appointment, Ms. Oates served as Executive Director of the New Jersey Commission on Higher Education and Senior Advisor to Governor Jon S. Corzine.

Naomi Barry-Peréz

Director, Civil Rights Center,
U.S. Department of Labor

Naomi Barry-Peréz was named the Director of the U.S. Department of Labor's Civil Rights Center (CRC) in July 2012. In that position, she is responsible for enforcing the civil rights laws that apply to the nation's workforce development system, including the Job Corps program. Ms. Barry-Peréz has spent much of her professional career in CRC, including serving as Acting Director from May 2011 to June 2012, as well as previous positions as Deputy Director, Chief of the Office of Internal Enforcement, and Acting Chief of the Office of Compliance Assistance and Planning.



Laura Moskowitz

Attorney, Office of Solicitor
U.S. Department of Labor

The Office of the Solicitor provides legal advice to the Secretary and agencies within the Department regarding the laws administered and enforced by the Department. Prior to joining the Department of Labor, Ms. Moskowitz worked in the legal services field, often on legal and policy issues concerning employment and criminal records.

Charles Turner

Adult Career Services Re-Entry Manager

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Mr. Turner supports formerly incarcerated people and people with criminal records reintegrate into society and the workforce. He's on the community advisory board for both Contra Costa County and Alameda County. In 2012, Mr. Turner was awarded Workforce Professional of the Year by the California Workforce Association.

Maximizing the New Opportunities to Promote Fair and Accurate Criminal Background Checks for Employment

Maurice Emsellem

Policy Co-Director
National Employment Law Project

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- Criminal background checks pose major employment challenges for over 65 million adults in today's struggling economy, especially for workers of color.
 - The Department of Labor's (DOL) criminal records guidance (TEGL 31-11), together with the new EEOC guidance, presents a timely educational and enforcement opportunity.
 - DOL's rationale for new TEGL and its step-by-step approach tailored specifically to federally-funded workforce programs go a long way to operationalize the federal civil rights and consumer protections.

Job Ads Posted By Federally-Funded Workforce Programs Raise Civil Rights Issues

- A variety of criminal record employer restrictions posted by federally-funded workforce programs disproportionately impact people of color, thus raising civil rights compliance issues.
- No Arrests/ Clean or Clear Records
 - “No criminal background,” California One-Stop posting – homecare worker.
 - “Must have clean background,” Ohio WIA-funded job placement services posting -manufacturing/warehouse.
 - “Must pass background check,” New Jersey WIA-funded job placement services posting - custodian/maintenance.

■ No Felony or Misdemeanor Convictions

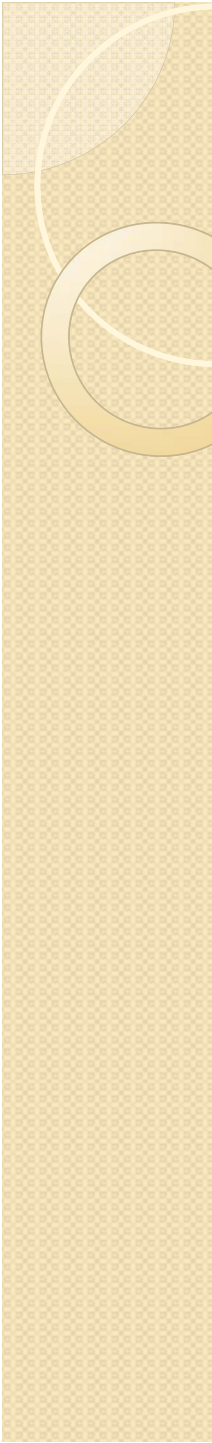
- “No felonies or misdemeanors,” California One-Stop posting - customer service reps

■ No Felony Convictions

- “Have no felonies on record.” New Jersey One-Stop posting - toolmaker/machinists
- “Clean background—minor misdemeanors ok.” Ohio WIA- funded job placement services posting - warehouse loaders

■ No Convictions within a Specified Timeframe

- “No felonies or misdemeanors for 10 years.” New Jersey One-Stop, customer service



Understanding the New DOL Guidelines Governing Criminal Background Screening and Federally Funded Workforce Development Programs (TEGL 31-11)

- Presenters
 - Jane Oates, Assistant Secretary for ETA,
U.S. Department of Labor
 - Naomi Barry-Perez, Director, Civil Rights Center,
U.S. Department of Labor
 - Laura Moskowitz, Attorney, Office of the Solicitor,
U.S. Department of Labor



Introduction

- Reintegration of formerly incarcerated individuals into communities is a priority for the Obama administration.
- Deputy Attorney General James Cole: “This Administration and this DOJ have made effective reentry a top priority.” (6/25/12)
- Secretary Solis: “When someone serves time in our penal system, they shouldn’t face a lifetime sentence of unemployment when released. . . .”



DOL initiatives to support reentry

- Federal bonding protection for employers who hire people with a criminal record
- Reentry grants and programs
- May 25, 2012 TEGL 31-11 issued



Civil rights obligations of workforce system

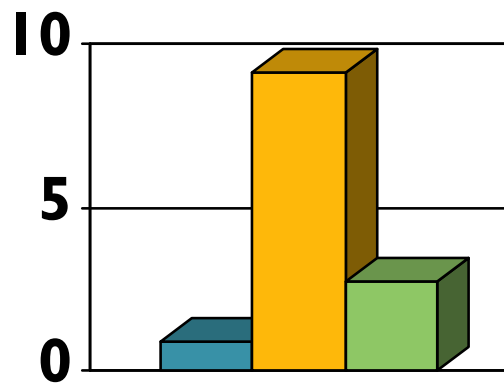
- Workforce system is subject to civil rights laws, and is obligated not to discriminate
- Law prohibits both:
 - deliberately discriminatory actions
 - actions that appear neutral, but:
 - have a discriminatory effect (impact), and
 - cannot be justified as job-related and consistent with business necessity



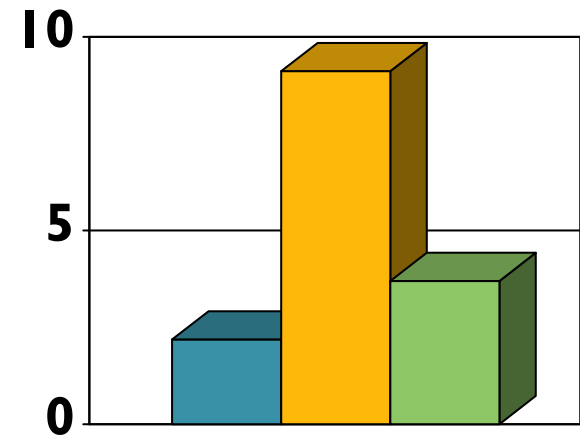
Potential Discriminatory Impact of Use of Criminal History

- 92% of employers in recent study acknowledged using criminal history in selection decisions
- Because of racial and ethnic disparities in criminal justice system, policies that restrict employment based on criminal history are likely to have disparate impact on communities of color

Racial and Ethnic Disparities in the Criminal Justice System

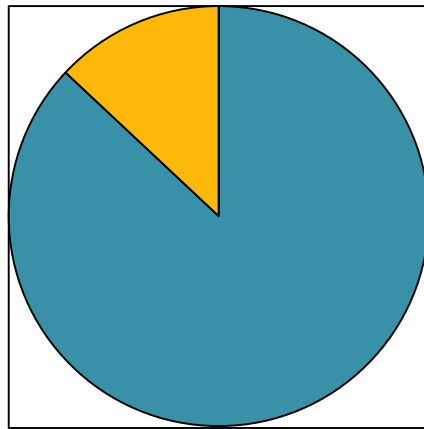


% men incarcerated

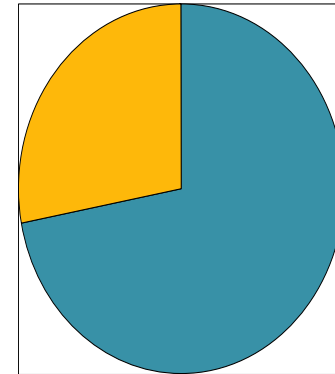


% adults under correctional control

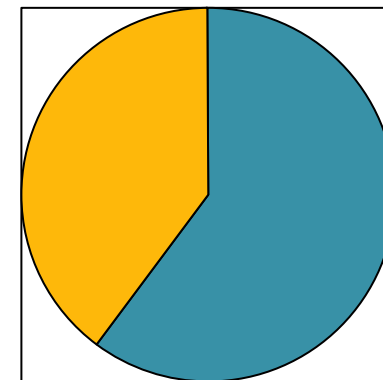
African-Americans as Percentage of Population, Arrests, Incarcerated



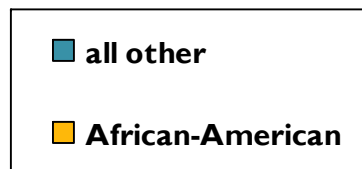
% of population

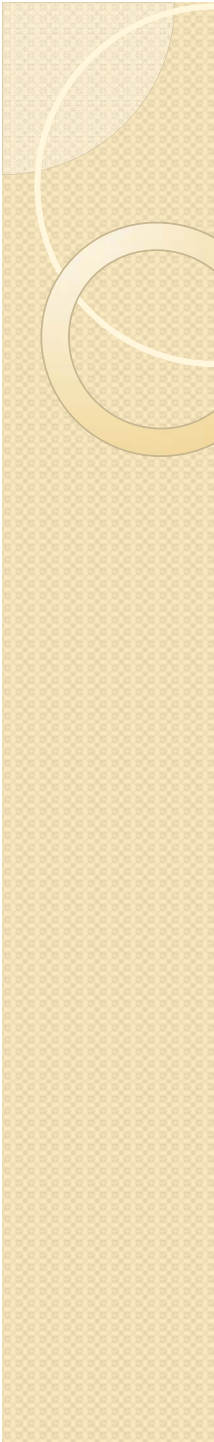


% of arrested



% of incarcerated





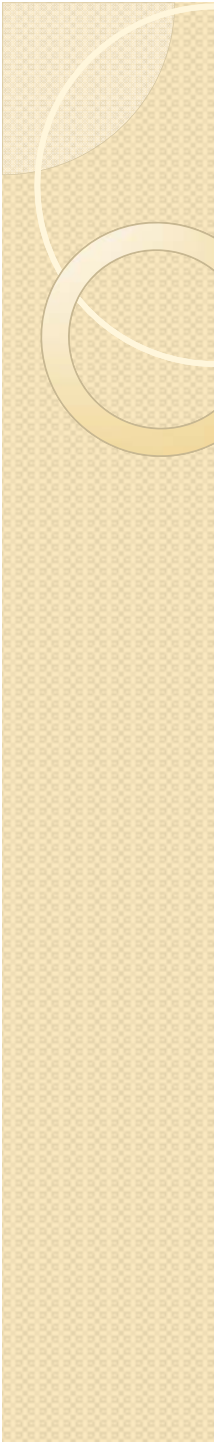
Recent EEOC guidance on use of arrest and conviction records in employment decisions

- “National data supports a finding that criminal record exclusions have a disparate impact based on race and national origin.”
- *Job-related and consistent with business necessity*
 - showing that a specific crime may present risks for a particular position. Analysis should include:
 - Nature and gravity of offense or conduct
 - Time that has passed since offense, conduct, and/or completion of sentence
 - Nature of job held or sought
 - Individualized assessment
- Automatic, across-the-board bars are likely to unjustifiably limit the employment opportunities of African Americans and Hispanics.



Applicable Statutes, Regulations, and Guidance

- Title VII of the Civil Rights Act of 1964
 - *EEOC Enforcement Guidance on Consideration of Arrest and Conviction Records in Employment Decisions*
- Title VI of the Civil Rights Act of 1964
- Section 188 of the Workforce Investment Act
- Implementing regulations



Public workforce system safeguards to prevent discrimination and promote employment opportunities

Step 1: Educate employers when they register to use the Job Bank (Notice #1)

Step 2: When a job announcement has been identified that includes hiring restrictions based on arrest and/or conviction records, give the employer an opportunity to edit or remove the vacancy announcement (Notice #2)



Safeguards (cont.)

**Step 3: Remaining announcements accompanied by notice to job seekers that the posting may be unlawful under certain circumstances, and that individuals with conviction or arrest histories are not prohibited from applying for the job.
(Notice #3)**



Safeguards (cont.)

- Refrain from screening and refusing to make referrals based on criminal history records
- Follow the EEOC's arrest and conviction guidance



Discrimination complaints

- CRC investigates and adjudicates discrimination complaints about the workforce system. Information about its complaint process is available at <http://www.dol.gov/oasam/programs/crc/external-enforcement-complaints-ENG.htm>, (202) 693-6502 (voice), or (202) 693-6516 (TTY).
- The EEOC investigates charges of discrimination against employers. Information about its complaint process is available at <http://www.eeoc.gov/facts/howtofil.html>, (800) 669-4000 (voice), or (800) 669-6820 (TTY).



Inquiries

- Inquiries about the following topics should be directed to ETA:
 - Incentive programs for hiring persons with criminal records
 - Other efforts to promote employment for persons with criminal records
- Contact info for ETA:
 - ETA National Office: (202) 693-3046 (voice) or 202 693 6516 (TTY)
 - ETA Regional Offices:
<http://www.doleta.gov/regions/regoffices/Pages/>

Local Perspective:

Informing Re-Entry Clients of the New Criminal Records Guidelines



By: Charles Turner
Oakland Private Industry Council, Inc.



About OPIC

The Oakland Private Industry Council, Inc. ... *putting people to work!*

Dedicated to helping the Oakland community maintain no-fee career centers and workforce development programs, the Oakland PIC has been in existence since 1978. Our goal is to aid the economy by helping job seekers prepare for work, then providing employers with highly trained employees.

The Oakland PIC has successfully served as the local WIA One Stop Career Center System facilitator since the program's inception in 2000.

A helping hand is a hiring hand ...

- A company or agency that is truly supportive of assisting and working with those who have criminal issues, will also consider those same individuals for employment opportunities.
- The Oakland Private Industry Council has hired those Formerly Incarcerated for many key positions, and the PIC will continue this policy being mindful of the offense committed & the position being held.



A helping hand is a hiring hand ...

To best prepare our clients for any legal barriers we suggest they all do the following:

- Obtain copies of all official Rap Sheets
- Ensure all offenses listed are yours
- Check dates and locations
- If any discrepancies are found immediately contact your Parole/Probation Officer
- Knowledge of your terms and conditions of your parole/probation

Information the Re-Entry Client Should Know

- How long ago was the offense?
- Age when the alleged offense occurred.
- Nature & gravity of conviction.
- Any rehabilitation efforts or attempts.
- We also advise clients on how to de-emphasize their offense, and emphasize their recent successes and achievements.
- We encourage clients to make contact with the local Child Support Agencies.
- Knowledge of the EEOC Guidelines.

Providing Legal Services on Criminal Records

It is imperative to inform our clients of their basic legal rights about their criminal records. However, for more specific or confidential legal matters we have MOUs with local legal entities such as:

- [The East Bay Community Law Center](#), which provides weekly in-person legal consultations at no cost. The Clean Slate Clinic program helps clients take advantage of their legal remedies to clean up their record and informs clients of their civil rights and consumer rights. Thus far this year they've served over 1700 clients. They host on-site consultations at the Downtown OPIC office, once a week.

Another MOU:

- The National Employment Law Project (NELP), has worked in conjunction with OPIC to co-facilitate information sessions to the business community. NELP has also facilitated client targeted information sessions, along with information sessions for staff and colleagues surrounding civil rights and consumer laws.

Our Next Steps with the New Guidelines

Ensure the federal “Re-Entry Myth Buster!” posters are displayed throughout our Career Center and OPIC offices.

Ensure all employers are aware of current employment laws & guidelines, including TEGL 31-11 Notices 1 & 2.

Ensure all applicants are aware of current employment laws & guidelines, including TEGL 31-11 Notice 3.

Our Next Steps with the New Guidelines

Ensure all providers are aware of current employment laws & guidelines, including TEGL 31-11 Notice 3.

Partner with **EEOC** and other local legal agencies to ensure current and up to date knowledge of all employment laws and regulation pertaining to employment.

Plan and schedule frequent events that focus on informing the employers, employees, job seekers, co-workers, colleagues and most of all the public in general about laws and regulations surrounding employment.

Thank you!

For more information, please contact:

Charles Turner

Re-Entry Services Manager

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Oakland, CA 94612

510.768.4485 | charlest@oaklandpic.org



Resources

- U.S. Department of Labor Civil Rights Guidelines Governing Background Checks and Federally-Funded Workforce Development Programs
http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9230
- U.S. Equal Employment Opportunity Commission Guidelines on Use of Arrest and Conviction Records for Employment
http://eoc.gov/laws/guidance/upload/arrest_conviction.pdf
- U.S. Reentry Council Reentry MythBusters
http://www.nationalreentryresourcecenter.org/documents/0000/1090/REENTRY_MYTHBUSTERS.pdf
- National Reentry Resource Center <http://www.nationalreentryresourcecenter.org/>
- Community Legal Services and National Employment Law Project Highlights of EEOC Guidance <http://www.nelp.org/page/-/SCLP/2012/EEOCHighlights.pdf?nocdn=1>
- National Employment Law Project, Community Legal Services, and National Reentry Resource Center Webinar powerpoints on EEOC Guidance http://www.nelp.org/page/-/SCLP/Webinar/Webinar_EEOC_CrimRecordsGuidance_5-30-2012.pdf?nocdn=1