



Fair Opportunity Hiring Dos and Don'ts:

Hiring Discrimination Amongst Formerly Incarcerated Applicants

Disparate Treatment

Disparate treatment occurs when an employer treats identical criminal histories differently for applicants who differ on race or national origin.

To avoid disparate treatment: Be sure your company has clear hiring policy before conducting a search and apply the policy equally across all applicants.

Disparate Impact

Disparate impact occurs when a policy that appears to be neutral has a disproportionate impact on a set of applicants from a common class.

To avoid disparate impact: Avoid using proxies that may result in different outcomes across races. For example, using arrests as a proxy for conviction history will disproportionately disqualify Latino and African American men.

Easy ways to incorporate fair opportunity into your hiring practices:

Nature-Time Nature Test: When considering a formerly incarcerated applicant, firms can assess the nature of the conviction, time since the crime, and the nature of the job to assess whether there is a legitimate conflict between conviction history and the role.

Conviction vs. Arrests: Studies conducted by the Department of Justice indicate that as many as 50% of arrests did not result in a final disposition. As a result, making a judgment based on an arrest alone puts a business at risk of engaging in biased hiring.

Individual Assessment Panels: This practice involves convening a panel to assess whether an applicant's criminal record poses a significant risk to performance of the role, and also provides the applicant an opportunity to respond to items on their background check.



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Fair Opportunity Hiring Dos and Don'ts:

Do...

- Gain clarity on your company's fair opportunity employment policy.
- Utilize industry recognized practices, like the Nature-Time Nature test to evaluate the relevance of a conviction to the role.
- Ensure applicants have a chance to speak to their growth since their conviction.
- Intentionally create an environment that gives individuals an opportunity to share their conviction history.

Don't...

- Assume that fair opportunity hiring can be handled on a case to case basis with no guidance or policy.
- Disqualify a candidate from a search based upon a background check alone.
- Use proxies for incarceration that disproportionately harm some populations over others, like arrests.
- Assume that applicants will readily share their conviction history regardless of the environment.



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