



New Jersey Job Applicants with Criminal Records: Protection Under Title VII of the Civil Rights Act of 1964

How Does Title VII Protect Job Applicants with Criminal Records?

Title VII of the Civil Rights Act of 1964⁶² does not directly prohibit discrimination against a job applicant based on the applicant's criminal record; Title VII only directly prohibits employment discrimination *based on race, color, religion, sex, or national origin*.⁶³ However, there are two scenarios in which an employment decision based on a criminal record could violate Title VII:

1. **Disparate Treatment:** Employers *may not* treat job applicants differently if they have (a) similar qualifications and (b) similar criminal records differently but (c) different racial or ethnic backgrounds.⁶⁴
EXAMPLE: It is a violation of Title VII to reject a black applicant due a conviction for drug possession while hiring a similarly qualified white applicant with a conviction for drug possession.
2. **Disparate Impact:** Employers *may not* have a general hiring policy regarding criminal records if that policy disqualifies black or Latino applicants at a higher rate than white applicants, *unless* the employer can show that (1) the policy is job related for the position in question and (2) the policy is consistent with business necessity.⁶⁵
EXAMPLE: A bus company could reasonably reject applicants with recent, multiple convictions for Driving While Intoxicated, because that offense is related to the job of driving a bus. However, that same bus company would violate Title VII if it had a policy of rejecting all applicants with any felony conviction or all applicants with a conviction for an unrelated offense, such as petty shoplifting (if the policy disqualifies black or Latino applicants at a higher rate than white applicants).

What Must an Employer Do to Show that a Hiring Policy is “Job Related and Consistent with Business Necessity?”

The Equal Employment Opportunity Commission (EEOC) has stated that an employer must either:

1. Validate the criminal record screen for the position in question by demonstrating a connection between the criminal records screened and subsequent work performance,⁶⁶ or
2. Develop an individualized assessment that considers:⁶⁷
 - a. The nature and gravity of the offense or conduct;
 - b. The time that has passed since the offense or conduct and/or completion of the sentence;
 - c. The nature of the job held or sought.

How Do I File a Complaint Under Title VII?

- **In Person:** Visit the closest Equal Employment Opportunity Commission Office to file a complaint in person:
One Newark Center, 21st Floor
Raymond Blvd at McCarter Hwy (Rt.21)
Newark, New Jersey 07102-5233
Fax: 973-645-4524
801 Market Street, Suite 1300
Philadelphia, PA 19107-3127
Fax: 215-440-2606
- **Mail** a letter describing your complaint to either of the above addresses.
- **Fax** a letter describing your complaint to: 973-645-4524 (Newark) *or* 215-440-2606 (Philadelphia).
- **Telephone:** 1-800-669-4000.

Read More About Title VII Violations Regarding Criminal Records:

http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf