



NORTHEASTERN STATE UNIVERSITY

RE: Screening Procedure for Background Checks

The US Equal Employment Opportunity Commission (EEOC) issued on April 25, 2012 an updated Enforcement Guidance on employer use of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964. While Title VII does not prohibit an employer from requiring applicants or employees to provide information about arrests, convictions or incarceration, it is unlawful to discriminate in employment based on race, color, national origin, religion or sex. The Enforcement Guidance explains how the EEOC analyzes the “job related and consistent with business necessity” standard for criminal record exclusions. Additional information concerning the new guidance can be found on www.eeoc.gov .

To meet the “job related and consistent with business necessity” defense, as HR Director I propose the following operational procedures for the use of background checks.

1. **Northeastern State will follow HR Policy 2.3.3 Selection**
Employment is contingent upon the satisfactory results of a pre-employment background check. Therefore, offers of employment are conditional until the required background check has been completed and reviewed. Human Resources is the approved NSU office to authorize, conduct and review background checks. Types of checks will include national criminal and national sex offender and may also include residency history, educational and employment verifications.
2. Questions asked of applicants about criminal records are limited inquiries to records for which exclusion would be job related for the position in question and consistent with business necessity.
3. Targeted Screens to determine if outcome of Background Check is job related and consistent with business necessity.
 - Reportable Events are reviewed considering:
 - A. Nature and gravity of the offense or conduct;
 - B. Time that has passed since the offense or conduct and/or completion of the sentence; and
 - C. Nature of job held or sought.
4. Individualized Assessment informs the individual that he/she may be excluded because of past criminal conduct and provides an opportunity to individual applicants to demonstrate that the exclusion does not properly apply and considers whether the individual's additional information shows the policy as applied is not job related and consistent with business necessity.

Process provides applicants the opportunity to discuss

- A. the inaccuracy of their criminal record;
 - B. the facts or circumstances surrounding the offense or conduct;
 - C. the number of offenses for which the individual was convicted;
 - D. age at the time of the conviction or release from prison;
 - E. evidence that the individual performed the same type of work post-conviction with the same or different employer, with no known incidents of criminal conduct;
 - F. length and consistency of employment history before and after the offense of conduct;
 - G. rehabilitation efforts, such as education or training;
 - H. employment or character references; and
 - I. whether or not the individual is bonded.
5. After this discussion with the applicant, the employer will decide whether it should make an exception to its policy or whether the application of the policy to the particular applicant is job related and consistent with business necessity.
 6. Information learned from/about applicants during this process will be kept confidential to the extent possible and will only be used for the purpose for which it was intended.

References:

- ScreeningOne compliance Update, May 9, 2012
- EEOC Issues Enforcement Guidance, April 25, 2012
- Questions and Answers About the EEOC's Enforcement Guidance, April 26, 2012