

## **Your Employment Rights to Not Be Rejected Based Upon Your Criminal Record**

If you have a criminal record, you probably have found that some employers have refused to hire you or have fired you on this basis. In some cases, such rejections are legal. In other circumstances, however, that hiring practice may violate State or Federal law.

### **Your State law rights**

Pennsylvania law states: "Felony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied." State law also requires that an employer must notify an applicant in writing if the decision not to hire him or her is based to any extent on his or her criminal history record.

To give you an example of how this law works, consider the case of a worker who has a record of having pled guilty to possession of narcotics. This conviction would probably permit a drug store to refuse to hire her, but it would not permit the owner of another type of retail store to take the same position. A person who was convicted of embezzling money would have no legal right to demand that an employer disregard that record when he applies for a bookkeeping job; however, that same employer might not be permitted to rely on the applicant's criminal history if he applied for a job that does not permit access to money.

If you learn that your application for a job has been rejected because of your criminal record and you believe that this may have been a violation of State law, your best bet is to tell this to the employer. You might even show the person a copy of the law (a copy is on the front on the second sheet), and tell him or her that it can be found at Volume 18 of Pennsylvania Statutes, Section 9125. Unfortunately, if this approach does not work, the only way to enforce the State law is to file a lawsuit, which is hard to do in these cases.

Another way in which a person's criminal record could affect his or her employment is if the State denies a license, certification, or permit that the worker needs to perform his or her occupation. If convicted of a felony or misdemeanor relating to the occupation for which the applicant seeks the license or permit, the State may deny, suspend or revoke the person's license. However, the State is usually not allowed to withhold a license or permit based on an arrest for which there has been no conviction; a conviction which has been annulled, expunged, or pardoned; a conviction for a summary offense; or a conviction which is not related to the applicant's suitability for the license. The remedy for a decision denying a license is probably an appeal to Commonwealth Court within 30 days of the decision; you will probably need the assistance of an attorney to represent you in the appeal.

## **Your Federal law rights against racial discrimination**

In addition to your State law rights, you may have Federal law rights against racial discrimination in employment if you are African-American or Hispanic. If you fall into one of those two racial groups and the employer has at least 15 employees, you can file a "disparate impact" race discrimination claim against the employer, because people in your group are disproportionately convicted of crimes. You are even more likely to be successful on such a charge of discrimination if you are rejected or fired on the basis of arrests which did not lead to convictions.

Under federal discrimination law, an employer is not allowed to reject you merely because you have a criminal record. However, the employer may consider the relationship between your convictions and your fitness for a particular job. If an employer does consider your record, it is required to inform you that factors such as the time passed since the offenses, the seriousness and nature of the offenses, and your rehabilitation will be taken into account.

Your rights to be free of racial discrimination based on your criminal record are enforced by filing a charge of discrimination with the Equal Employment Opportunity Commission (called "the EEOC"), which is located in the Bourse Building at 21 South 5th Street in Philadelphia. The charge must be filed within 300 days of the incident you are complaining about in order to allow you to later bring a lawsuit. You should take with you the sample charge of discrimination that is on the back of the second sheet as an example.

When evaluating whether your rejection or firing was racial discrimination, the EEOC will look at: (1) the nature and seriousness of the offenses; (2) the time that has passed since the convictions or completion of your sentences; and (3) the nature of the job for which you applied. If you were rejected for an arrest that did not lead to a conviction, the EEOC will also examine whether the employer tried to learn whether you committed the conduct for which you were charged.

## **How should you answer questions about your criminal record?**

There is no easy answer to this question. If you tell the truth, the employer may reject you because of your record but not tell you that that is the reason. But when job applicants lie about their records, employers often find out and say that they are firing them for lying on their applications, not their criminal records. This explanation makes it much harder for a person to try to enforce his rights, as well as probably disqualifying him from unemployment compensation and making finding the next job even harder. Perhaps the best thing to do is to be truthful and to ask for a reason when turned down for employment. If the employer gives some other reason for rejecting you, ask questions about whether your criminal record played a part in its decision.

§ 9125. Use of records for employment

(a) **General rule.**—Whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant, only in accordance with this section.

(b) **Use of information.**—Felony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which he has applied.

(c) **Notice.**—The employer shall notify in writing the applicant if the decision not to hire the applicant is based in whole or in part on criminal history record information.

1979, July 16, P.L. 116, No. 47, § 2, effective Jan. 1, 1980. As amended 1979, Dec. 14, P.L. 556, No. 127, § 3, imd. effective; 1982, June 11, P.L. 476, No. 138, § 4, effective in 180 days.

