**EEOC CHARGE – COVER LETTER**

**REJECTION BASED ON CRIMINAL CONVICTION**

DATE

Equal Employment Opportunity Commission

\_\_\_\_\_\_\_\_\_\_\_\_ District Office

Re: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ v \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To Whom It May Concern:

Enclosed is a charge of race discrimination, which my client, CLIENT, would like to file against EMPLOYER (“EMPLOYER”) on behalf of herself and all of those similarly situated. I am representing Ms. \_\_\_\_\_\_\_\_\_ in this matter and this letter should serve as my entrance of appearance.

**Introduction**

The basis of Ms. \_\_\_\_\_\_\_\_\_’s claim is that EMPLOYER failed to hire her as a personal care aide based solely on her criminal record—a 2005 guilty plea for attempted theft by unlawful taking, a misdemeanor. EMPLOYER has an apparent policy of automatically barring from employment individuals with certain criminal convictions, regardless of how old the conviction is. Ms. \_\_\_\_\_\_\_\_\_ is surely not the only individual who has been denied a job because of this policy, which is why she files this charge on behalf of those similarly situated.

**The 2012 EEOC Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII**

As I am sure you are aware, criminal records exclusions from employment is an enforcement priority for the EEOC. Emphasizing its priority on this area, the EEOC recently released new guidance on the use of criminal records in employment. See “Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq” (April 25, 2012) (hereinafter “2012 EEOC Enforcement Guidance”).

The guidance states that an employer’s policy or practice of excluding individuals from employment on the basis of their criminal records may violate Title VII because such exclusion has a disparate impact on minorities. The guidance emphasizes several factors that weigh in any business necessity defense, including the nature and gravity of the offense, the time passed since the offense, and the nature of the job held or sought. A blanket exclusion for all applicants with a criminal record for certain crimes or classes of crimes is illegal.

In cases where an employer has not performed a validation study on its criminal background screen (which EMPLOYER has not claimed to have done), under the 2012 EEOC Enforcement Guidance, the EEOC should look for compliance with the following analysis:

The employer develops a targeted screen considering at least the nature of the crime, the time elapsed, and the nature of the job (the three Green factors), and then provides an opportunity for an individualized assessment for people excluded by the screen to determine whether the policy as applied is job related and consistent with business necessity.

(2012 EEOC Enforcement Guidance, p. 14).

As for individual assessment, the 2012 EEOC Enforcement Guidance identifies the following relevant factors.

* The facts or circumstances surrounding the offense or conduct;
* The number of offenses for which the individual was convicted;
* Older age at the time of conviction, or release from prison;
* Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
* The length and consistency of employment history before and after the offense or conduct;
* Rehabilitation efforts, e.g., education/training;
* Employment or character references and any other information regarding fitness for the particular position;
* Whether the individual is bonded under a federal, state, or local bonding program.

(2012 EEOC Enforcement Guidance, p. 18 (footnotes omitted)).

In addition to the newly released guidance, the EEOC recently approved its 2013-2016 Strategic Enforcement Plan (SEP) which prioritizes issues relating to criminal records and employment. <http://www.eeoc.gov/eeoc/plan/sep.cfm> . The SEP lists five priorities, the first of which is systemic barriers in recruitment and hiring, including background screens that adversely impact protected groups. This screen falls squarely within that strategic priority.

**Title VII as Applied to EMPLOYER’s Hiring Process**

EMPLOYER employs over 10,5000 individuals in the \_\_\_\_\_\_\_\_ field, reaching over 50,000 people in \_\_\_\_\_\_\_\_\_\_\_\_\_, in such sensitive areas as \_\_\_\_\_\_\_\_\_\_\_\_. It claims to be the largest \_\_\_\_\_\_\_\_\_\_\_ in the country.

Although it is possible to make hiring decisions based on a criminal record and stay in compliance Title VII, EMPLOYER did not do so. Specifically, according to the 2012 EEOC Enforcement Guidance, in order to comply with Title VII a targeted exclusion must:

1. Be well tailored to the specific job involved
2. Be based on fact-based evidence
3. Take into account relevant and available studies on this issue

*See 2012 EEOC Enforcement Guidance*, 17-18.

EMPLOYER excluded Ms. \_\_\_\_\_\_\_\_ for hire because of a seven year old guilty plea for attempted theft by unlawful taking, a misdemeanor. This was communicated to Ms. \_\_\_\_\_\_\_\_ by two different individuals at EMPLOYER. Unfortunately, Ms. \_\_\_\_\_\_\_\_\_\_ was never questioned about her criminal record nor given a chance to explain the circumstances surrounding her record. Without the relevant information, EMPLOYER could not have had a justifying business necessity for excluding Ms. \_\_\_\_\_\_\_\_\_\_\_\_\_ on the basis of her criminal record. This is true for a number of reasons:

* Ms. \_\_\_\_\_\_\_\_\_\_\_\_’s record contains only one conviction, for a seven year old misdemeanor.
* The misdemeanor was an isolated incident and a very minor crime.
* Ms. \_\_\_\_\_\_\_\_\_ also has had a long and very positive work history in personal care. Since 2006, she has been working in the health care field, with five of those years spent working specific with adults and children with mental illness and mental disabilities.
* Ms. \_\_\_\_\_\_\_\_\_\_\_ is also currently enrolled in college and is working towards getting her bachelor’s degree in behavior health and human services.

EMPLOYER may also argue that it is precluded from hiring Ms. \_\_\_\_\_\_\_\_\_\_ based on a state law such as the Older Adult Protective Services Act (“OAPSA”) or the Child Protective Services Law (“CPSL”). Neither law should bar Ms. \_\_\_\_\_\_\_\_\_\_\_ . OAPSA only bars individuals who have been convicted of felony theft or two misdemeanor theft offenses; the CPSL has no bar for theft offenses. As well, Ms. \_\_\_\_\_\_\_\_\_\_\_\_ has extensive work history which would allow her to bypass those laws even if they were applicable, under the state’s policies.

The importance of this case cannot be understated in the context of the EEOC’s recent focus on this issue. Not only does this case fall squarely within one of the major case priorities of the EEOC, but it involves a major employer in \_\_\_\_\_\_\_\_\_\_\_\_, touching the lives of more than 10,000 employees and 50,000 clients daily. The scope of the problem makes this case appropriate for a nationwide “class action” handling of this case, helping not just Ms.\_\_\_\_\_\_\_\_\_\_\_\_, but all those similarly situated.

If I can be of any help to you as you process and investigate this claim, please contact me at \_\_\_\_\_\_\_\_ or by email at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Sincerely,

ATTORNEY