

Aug. 10, 2011

Equal Employment Opportunity Commission
131 M St., NE
Washington, DC 20507

Re: Employer Use of Criminal Histories to Mitigate Risk and Promote Safety

To the Equal Employment Opportunity Commission:

We understand that the EEOC is reexamining the use of criminal background checks for existing or prospective workers and may even revise existing guidance on this issue. As companies and associations whose members make use of background checks, we agree with the Commission that hiring practices should be fair and equitable in theory and practice.¹

In addition, we are companies and trade associations representing businesses that have a critical need to protect the safety of people and property in workplaces across the United States. We know you share our concern for wanting to keep workplaces safe, keep them free of fraud and theft and protect vulnerable populations. One of the most important ways to create safe working environments is for employers, principals, and volunteer organizations to be able to conduct criminal background checks of employees, independent contractors, and volunteers.

Fair and appropriate use of criminal histories is one of the most important tools businesses have to protect themselves, their other workers, and their customers. Criminal background checks are an effective way to protect vulnerable individuals such as children, the elderly and the disabled, as well as individuals in vulnerable situations, such as those who invite strangers into their homes for repairs and deliveries. We want to make informed hiring decisions within the bounds of the law.

The Occupational Safety and Health Administration (“OSHA”) tells us that “violence in the workplace is a serious safety and health issue. Its most extreme form, homicide, is the fourth-leading cause of fatal occupational injury in the United States.” The General Duty Clause of the Occupational Safety and Health Act (29 U.S.C. § 654(a)(1)) requires employers to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees”.

As long as there is workplace violence, fraud, theft, and a need to protect vulnerable populations, there will always be a need to review the criminal histories of applicants for certain positions. We understand the frustration some have in finding employment, especially in a time of national economic stress, and we also appreciate the strong desire to reintegrate former prisoners into American society. However, attempts to ease unemployment frustration or reentry desires should not come at the expense of keeping people and businesses safe from physical or financial harm.

Many states have passed laws holding employers liable for negligent hiring and negligent retention of employees with a history of violent behavior who cause harm to co-workers at some time in their employment. Because of these laws, many employers believe it is necessary to conduct pre-employment criminal background checks or else be held liable for the actions of employees with criminal histories.

¹ On July 22, 2011, 14 associations signed this letter that was filed, and today another 44 have been added.

We want to keep our workplaces safe and reduce fraud and theft. Within the bounds of existing law, we want the flexibility to conduct criminal background checks that are fair and appropriate. As the EEOC reexamines the use of criminal background checks for existing or prospective employees, we hope you will take our concerns to heart. We thank you for your consideration.

Respectfully submitted,

Air Conditioning Contractors of America	International Association of Refrigerated Warehouses
Alliance of Wisconsin Retailers	International Franchise Association
American Apparel & Footwear Association	Montana Chamber of Commerce
American Association of Christian Schools	Mortgage Bankers Association
American Bakers Association	National Association of Convenience Stores
American Boiler Manufacturers Association	National Association for Health Care Recruitment
American Foundry Society	National Association of Manufacturers
American Hotel & Lodging Association	National Association of Wholesaler-Distributors
American Society of Employers	National Council of Chain Restaurants
American Staffing Association	National Credit Reporting Association
Associated Builders and Contractors, Inc.	National Multifamily Resident Information Council
Automotive Wholesalers Association (California, Nevada, Arizona)	National Ski Areas Association
Capital Associated Industries, Inc. (North Carolina)	North American Die Casting Association
College and University Professional Association for Human Resources	North American Equipment Dealers Association
Electronic Security Association	North Carolina Electronic Security Association
Employers Coalition of North Carolina	North Carolina Pest Management Association
Food Marketing Institute	Outdoor Amusement Business Association, Inc.
Global Cold Chain Alliance	Property Casualty Insurers Association of America
Greater Louisville Inc. – The Metro Chamber of Commerce	Security Industry Association
Inland Pacific Chapter, Associated Builders and Contractors, Inc. (ABC)	Society of Independent Gasoline Marketers of America
International Association of Amusement Parks and Attractions	Tavern League of Wisconsin
	Vermont Grocers' Association
	Wisconsin Manufacturers and Commerce



Signatories on July 22, 2011

ASIS International

Big Brothers Big Sisters of the Ocean State

Consumer Data Industry Association

HR Policy Association

National Apartment Association

National Association of Professional

Background Screeners

National Association of Security Companies

National Multi Housing Council

National Pest Management Association

National Restaurant Association

National Retail Federation

Pennsylvania Tourism and Lodging Association

Retail Industry Leaders Association

Rhode Island Statewide Coalition

