

STANDARDS FOR HIRING PEOPLE WITH CRIMINAL RECORDS

The Unfair Roadblock: More and more employers are conducting criminal background checks on job applicants, which can make it much more difficult for the millions of Americans with criminal records to find employment and become productive, law-abiding members of society. Most states allow employers to refuse to hire people with criminal records; not only individuals who have been convicted -- even if they have paid their debt to society and demonstrated their ability to work without risk to the public -- but also those who were arrested and never convicted. Although no one questions the legitimate concerns of employers who do not want to hire someone with a conviction record who clearly demonstrates a threat to public safety or who otherwise has a conviction history directly related to a specific job, policies that encourage employers to adopt broad sweeping exclusions (i.e. not hiring or considering anyone with any type of criminal history) simply locks out and eliminates many qualified, rehabilitated individuals from the job market. (See the Legal Action Center's report, **After Prison: Roadblocks to Reentry**, at (<http://www.lac.org/lac>.)

How to Remove the Roadblock: States should have laws that prohibit across-the-board employment discrimination against people with criminal records and instead require employers to make individualized hiring decisions by applying specific standards. The law should incorporate standards that will guide employers to make fair and appropriate employment decisions that will effectively address the needs of qualified individuals with criminal records seeking a fair chance as well as address legitimate employer and public safety concerns. However, it is important to note that employers should not be able to deny employment based on an arrest that did not lead to a conviction.

This tool kit provides materials advocates can use to seek the passage of laws that prohibit blanket policies that deny employment to qualified people with criminal records and establish standards employers should use in making individualized hiring decisions, including:

- [Employment of Individuals with Criminal Records – What Needs to be Changed and Why](#)
- [Summary of State Laws](#)
- [What You Can Do](#)
- [Model Laws](#)
- [Action Alert](#)
- [Sample Letter](#)

EMPLOYMENT OF INDIVIDUALS WITH CRIMINAL RECORDS – WHAT NEEDS TO BE CHANGED AND WHY

The majority of states allow employers – both public and private – and occupational licensing agencies to disqualify applicants with any kind of criminal record, regardless of how serious the criminal history, how long ago it occurred, or without having to consider the applicant's work history, qualifications, or personal circumstances in relation to the job or license being sought. (See [Summary of State Laws](#)) Most states even allow employers to deny employment to applicants who have been arrested but never actually convicted of a crime or non-criminal offense. As a result, many of the 600,000 individuals who return from prisons every year and the millions of other Americans with a criminal record find themselves unable to fully integrate back into their communities, contribute to their families and local economy and resume life as productive members of society. See the Legal Action Center's [Prohibit Inquiries About Arrests That Never Led to Conviction Toolkit](#).

Employers who do not hire people with a criminal record give various reasons for their policy, including fear of liability or risk, or concern about being sued for “negligent hiring” if an employee commits a new crime, or compliance with mandates imposed by state or federal law. While employers certainly should take into account a person's criminal history for the sake of determining if the person's conviction records are job-related, having flat bans against employing qualified people with criminal records limits the employer's opportunity to attract and retain a large percentage of the workforce who is trained, motivated, and who has access to a number of resources employers could gain benefit from. Therefore, legislation that encourages employers to make individualized determinations when considering people with criminal histories and that sets standards for consider these individuals, benefits the general public, employers, and people with criminal histories. People with jobs are less likely to commit criminal acts. They are able to resume life as productive members of society, care for themselves and their families, all while contributing to the local economy and tax base.

As discussed in more detail below, advocates in states that do not have anti-discrimination legislation should encourage the passage of laws that prohibit employers from refusing to hire applicants simply because they have

been arrested or convicted and require employers to individually assess the qualifications of people with criminal records.

(Important note: Federal courts have ruled that Title VII of the Civil Rights Act of 1964 prohibits employers from imposing blanket bars to employment of people with conviction histories. Coming soon, you will find more information in the Legal Action Center's toolkit Enforce Anti-Discrimination Laws.)

SUMMARY OF STATE LAWS

The majority of states allow employers to refuse to hire anyone with a conviction record – or even an arrest that never led to conviction – because they have absolutely no guidelines or regulations on how an employer must evaluate a criminal history when considering an applicant. Only fourteen states have legal standards governing public employers' consideration of an applicant's criminal record that require an individualized assessment of the applicant's qualifications and ability to do the job. These states are: Arizona, Colorado, Connecticut, Florida, Hawaii, Kansas, Kentucky, Louisiana, Minnesota, New Mexico, New York, Pennsylvania, Washington, and Wisconsin. To see an overview of the laws of all fourteen states, [click here](#). Only five of those states – Hawaii, Kansas, New York, and Wisconsin – regulate private employers. Even when it comes to granting licenses for a wide range of occupations, only 21 states have standards that require a "direct," "rational," or "reasonable" relationship between the license sought and the applicant's criminal history to justify the agency's denial of license, while the other 29 states do not.

For a complete description of the 50 states' laws concerning employment of people with criminal records, please see the Legal Action Center's report *After Prison: Roadblocks to Reentry* at <http://www.lac.org/lac/main.php?view=law&subaction=4>.

WHAT YOU CAN DO

If you are in a state that allows discrimination against individuals with criminal records, you can advocate for passage of laws that forbid employers from accessing or considering arrests that did not lead to conviction. (See [Sealing Arrests and Convictions Toolkit](#)), and that require individualized assessments of applicants with conviction records. Employment standards can enable employers to screen out applicants who are unqualified or a safety risk while simultaneously enabling rehabilitated people to obtain jobs. We strongly recommend that the law require all employers, both public and private, as well as occupational licensing agencies, to follow these standards.

MODEL LAWS

The Legal Action Center has developed a list of [Key Provisions](#) that we think should be included in state laws that create standards for the employment of people with criminal records. You can use this list in drafting legislation in your state.

We believe that the laws in Hawaii, Kansas, New York, Pennsylvania, and Wisconsin have the strongest laws protecting people with criminal records from employment discrimination. [Click here](#) for both descriptions and full text of all five of those states' laws.

ACTION ALERT

If your state is considering legislation to forbid employers and licensing agencies from discriminating against individuals with criminal records who are qualified and have paid their debt society, alerting supportive groups and individuals and asking them to contact their legislators to support the legislation is an effective way to bring about change. [Click here](#) for a model Action Alert you can shape for your specific needs and use to seek grass roots support.

SAMPLE LETTER

[Click here](#) for a model Sample Letter you can send along with the Action Alert to help your grass roots supporters write to their elected officials urging them to support legislation that forbids employment discrimination against individuals with criminal records who are qualified and have paid their debt society. Once again you can shape this Sample Letter to meet your specific needs.