

EEOC Reminds Employers of the Importance of Targeted Screening and Individualized Assessment Processes

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On September 24, 2018, the U.S. Equal Employment Opportunity Commission (EEOC) reaffirmed the importance of following its [2012 enforcement guidance](#) on employer use of criminal history information—specifically the EEOC’s targeted screening process and individualized assessment process—when it [announced a voluntary agreement with large furniture retailer Rooms To Go](#). The agreement resolved allegations of race discrimination brought by an African-American job applicant whose offer of employment was rescinded based on Rooms To Go’s background check policies.

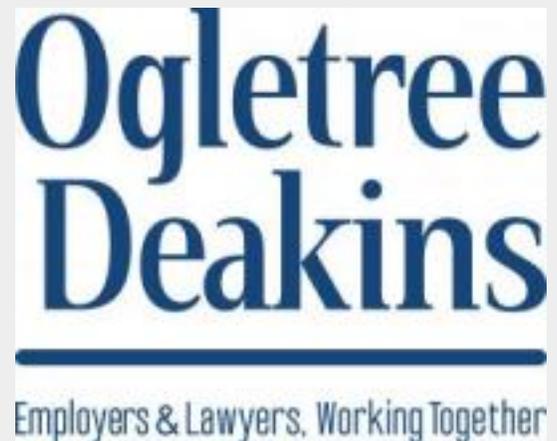
According to the EEOC, Rooms To Go has removed blanket exclusions for criminal convictions from its background check policies; the revised policies now allow applicants with criminal convictions to participate in individualized assessments. Rooms To Go also has removed criminal conviction questions from its employment application and has postponed criminal history inquiries until later in the hiring process—according to the EEOC, to ensure that applicants are chosen based on qualification rather than screened out based on criminal history. Finally, Rooms To Go has agreed to provide training on its revised criminal background check procedures, as well as mandatory implicit bias training and annual refresher training.

This development reinforces the importance of employer compliance with the [EEOC’s 2012 guidance](#). Among other things, the guidance advises employers (a) to use targeted screens to ensure only criminal convictions that are job-related and consistent with business necessity are considered and (b) to conduct individualized assessments based on nine factors before making final employment decisions based on criminal history information. To evaluate the nine factors, employers should consider inviting applicants or employees to submit additional information or context regarding the criminal history information. The EEOC guidance also strongly discourages employers from using general disqualification criteria (e.g., a felony conviction disqualifies an individual from all jobs) when evaluating criminal history information.

This enforcement action is a reminder of the EEOC’s 2012 guidance, including the individualized assessment process. Employers should review their background check policies and procedures to evaluate compliance with the guidance.

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