Applicants with Convictions

Summary of Research made possible by grant from the Michigan State Bar Foundation

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June 2010

Do you worry about discrimination claims based on refusing to hire applicants with a criminal record?

Do you fear liability for harm caused by an employee with a criminal record?

Are you interested in increasing the employment of ex-offenders in Michigan?

Employers are reluctant to hire applicants with a criminal record because of potential liability and performance issues. At the same time, employment often discourages more criminal behavior by ex-offenders. Under a grant from the Michigan State Bar Foundation, we collected data from employers and work placement agencies in Michigan through surveys assessing the factors employers have considered in deciding to hire ex-offenders. Michigan has taken an important step for ex-offenders in providing services to offenders through the Michigan Prisoner Reentry Initiative. Our focus has been on potential liability based on negligent hiring, restrictions on using conviction information in hiring decisions, and discriminatory disparate impact concerns. This information should help employers and work placement agencies make better informed, more justifiable hiring decisions regarding ex-offenders, and is expected to promote the hiring of ex-offenders in Michigan.
**Ex-Offenders Need Jobs**

The most important factor in the reduction of recidivism is a person’s ability to gain “quality” employment. (May, 1995; Needels, 1996); Uggen & Thompson, 2003).

One expert concluded:

“Ex-offenders who are unable to secure jobs upon release are much more likely to re-offend than those who are employed.” Simonson (2006).

As of June of 2008:

- 1,610,584 adult inmates under state and federal prison jurisdiction
- 2,310,984 prisoners held in federal or state prisons or local jails
- 700,000 released from prisons in U.S. each year

Approximately 17 million ex-felons are available for work in 2010.

As of June 2008, incarceration rates in state & federal prisons & jails:

- 4,777 African American male inmates per 100,000 African American males
- 1,760 Hispanic male inmates per 100,000 Hispanic males
- 727 white male inmates per 100,000 white males

Among males aged 30-34, rate of incarceration for African Americans is 6.2 times greater (11,137 per 100,000) than for whites (1.793 per 100,000).

A black male high school dropout born between 1965 and 1969 had nearly a 60% chance of serving time in prison by the end of the 1990’s. Pettit and Western (2004).

In Michigan:

- 2007: 12,429 paroled
- 2008: 11,488 paroled
- 2008: 4,927 returned to prison (43%)
  - 1,885 technical violators
  - 2,029 new sentences
  - 1,013 parole revoked

**Reluctance to Hire Ex-Offenders**

Research has established that employers’ unwillingness to hire ex-offenders is “widespread.” Simonson (2006). Over 60% of employers responded in one study that they “probably would not” or “definitely would not” hire an ex-offender. Rapheal (2006).
Over 40% of Los Angeles employers surveyed would reject an applicant with a criminal record, without considering the nature of the offense or any other individual factors. Travis (2005).

The aversion to hiring ex-offenders has been found to be even stronger than an employer’s aversion to hiring other applicants who are commonly rejected, such as welfare recipients, or applicants without a high school diploma or with gaps in their employment histories.

A criminal record has been shown to have a greater effect for applicants of color. Pager. The criminal record penalty suffered by black applicants (60 percent) was roughly double the size of the penalty for whites with a record (30 percent). Pager, Western & Sugie (2009).

Examples of employers’ reluctance to hire ex-offenders emerged from our survey of Michigan employers:

- “We do not hire personnel with criminal records of any kind other than minor traffic related offenses”
  – Security Firm
- “We do not hire ex-offenders that have committed a felony. We may consider ex-offenders that committed a misdemeanor, depending on the crime.”
  – Tax administration firm

Despite this reluctance, 58% of the employers responding to our survey were willing at least “in some circumstances” to hire ex-offenders. In addition, employers noted some specific benefits from hiring ex-offenders, including over 40% noting the benefits of a good work ethic and the ability to follow directions.

**Employer Concerns in Hiring Ex-Offenders**

Federal nondiscrimination law requires that an employer show a business necessity for excluding ex-offenders if that exclusion has a disparate impact on applicants of color or with disabilities. A business necessity can be based on preserving workplace safety, or a relationship between the crime committed and the job duties.

The survey of Michigan employers found that these were the most significant concerns about hiring ex-offenders (numbers show average score given each factor out of 5):
Sex offender registry restrictions 4.6
Potential harm to customers or other 3d parties 4.5
Potential harm to coworkers 4.4
Property loss/theft 4.1

These concerns were greater than concerns about eligibility to work in the U.S., a general lack of trustworthiness, or a lack of training, work experience or education.

39% of the employers surveyed also noted the legal barriers to hiring ex-offenders in Michigan, including restrictions on hiring some ex-offenders in schools and long term care facilities.

Approximately 10% of the survey respondents overstated the state restrictions on the hiring of ex-offenders.

For example, a nursing home stated that it was prevented from hiring anyone with a criminal history, when in fact state law only requires a waiting period before long term care facilities can hire many applicants with convictions. Similarly, some schools responded that they did not or could not hire any ex-offenders, whereas state law only prohibits the hiring of sex offenders by schools. Employers who overstated the state restrictions on hiring ex-offenders were significantly more likely to report that their organizations were “not at all willing” to hire ex-offenders. This finding suggests that an inaccurate understanding of the law is contributing to at least some employers’ unwillingness to consider hiring ex-offenders.

**Showing a Business Necessity for Excluding Ex-Offenders**

Our survey of Michigan employers asked about factors that employers consider in deciding whether to hire ex-offenders. The factors considered to be “very important” by the most employers (numbers show average score given each factor out of 5):

- Violence associated with crime 4.6
- Sex offender registration restrictions 4.5
- Level of offense (felony vs. misdemeanor) 4.4
- Relationship of crime to ability, capacity or fitness to perform job duties & responsibilities 4.3
- Total number of crimes committed 4.2
- Connection to potential to cause property loss/theft 4.2
- Time since conviction 4.1
- Evidence of rehabilitation since conviction 4.0
These factors were considered to be much more important, on average, than other factors such as lack of training or skills, lack of education, a belief that the crime shows unfavorable character traits, or a lack of general work experience.

 Agencies in Michigan which assist ex-offenders in finding employment agreed that sex offenses and violent crimes were the most significant factors considered by employers.

**Employer Policies**

Consistent with these factors, the survey found that employers most often had policies regarding these factors related to the hiring of ex-offenders:

- Level of offense (felony vs. misdemeanor)
- Violence associated with crime
- Sex offender registration
- Relationship of crime to ability, capacity or fitness to perform job duties & responsibilities
- Connection to potential to cause property loss/theft

However, a significant number of employers considered the factors related to the crime committed (as described above) without having a formal policy about those factors.

**Importance of Honesty**

Employers noted the importance of disclosing convictions on an application. Even if the employer would otherwise consider hiring an ex-offender, the “dishonesty” shown by not revealing a conviction was seen as a definite bar to employment. Employers also advised that applicants should provide additional information to explain the circumstances of the criminal offense.

**FREE RECORDED WEBINARS**

These webinars provide insight into issues which arise in connection with the hiring of ex-offenders. Feel free to review these recorded webinars at these URLs (Flash required):

- Adverse Impact Claims Based on Rejection of Applicants with Criminal Records
  http://breeze.msu.edu/p48346830/

- Negligent Hiring Liability for Employers
  http://breeze.msu.edu/p96168277/

- How Employers in Michigan Decide Whether to Hire Applicants with Criminal Records
  http://breeze.msu.edu/p21528544/
References


Travis, Jeremy, But They All Come Back: Facing the Challenges of Prisoner Re-entry 163 (2005)


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