



SECOND



CHANGE

TOOLKIT FOR BUSINESSES

SECOND CHANCE HIRING



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ACKNOWLEDGEMENTS

This tool kit was originally produced as a joint project between the Greater Oklahoma City Chamber, the Oklahoma County Criminal Justice Advisory Council (CJAC) and the Moore-Norman Technology Center. This team hopes to help make a difference for justice-involved individuals by equipping employers for vocational re-entry and justice-involved individuals for employment. The Council Bluffs Chamber acknowledges their contribution to much of the content of this tool kit. The information has been researched to fit our local Metro Area. The CB Chamber is pleased to offer this resource to our members as part of our economic and talent development initiatives.

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INTRODUCTION

For any company, there are a variety of factors that impact their bottom line - sales, inflation, the political climate, the economy and even the availability of great workers.

One of the biggest challenges facing businesses is finding talent. While many businesses are recovering from the COVID-19 labor shortage, there have been some major shifts in the job market still affecting the availability of talent. When COVID-19 hit the Metro Area an estimated 11,500 workers left the labor pool. Since then it is estimated that half have returned (3), but employers are still reporting the need for sustainable workers. For our regional economy to continue to grow, we must continue to find new pipelines for talent to supply the demands of our regional companies.

Finding good talent impacts your bottom line. a 2018 report by the Work Institute estimates that the average turnover costs associated with an employee leaving are 33% of their salary. (2) With the high cost of turnover and the growing need for talent, some employers are now considering pipelines of talent with potential barriers to employment that may have been overlooked in the past, including those who have a criminal background.

Why should an employer consider hiring someone with a criminal background? According to a local Nebraska states organization, **RISE** says compared to the general workforce, justice-involved individuals have lower turnover rates, lower absenteeism, and higher retention rates. The results are reducing the cost of turnover allowing your business to continue to grow and be successful.

The Council Bluffs Area Chamber of Commerce's mission is to work to enhance the economic growth and prosperity of its members and the Council Bluffs area. By being the premier business leadership organization providing "Leading Edge" programs and services to its members, new and existing business and industry, and local governments having the desire to make a positive impact on the area. Providing those justice-involved individuals a second chance fulfills our mission while providing a talent pipeline to our employers. Including helping them to expand their potential talent opportunities.

IMPLICATIONS & GUIDELINE

Making the decision to be a second-chance employer and hire justice-involved individuals is a significant step which requires careful reflection and understanding to ensure that your company has a solid understanding of the impact this decision will have. To ensure that you have all the facts before you begin, we've outlined some important legal and ethical implications that must be considered and properly implemented to maximize the outcomes for both employer and those that you may hire.

This toolkit is meant to serve as a resource and is not a substitute for legal advice when considering second-chance or other hiring practices. You are encouraged to seek legal counsel to discuss specific situations and circumstances.

EMPLOYER QUICK START GUIDE

01

SHOULD I EMPLOY JUSTICE INVOLVED?

- Will your company's culture support this individual's endeavors?
- Can you accommodate their constraints (parole check-ins, etc.)
- Have you removed felony questions from your applications?

02

HOW CAN I MITIGATE LOSS CONCERNS

- Hiring personnel that are proficient in background checks nuances.
- Employee applies for federal bonding program.
iowaworkforcedevelopment.gov/federal-bonding

03

HOW DOES THIS BENEFIT EMPLOYERS

- Dedicated, loyal employees.
- Increased talent pool.
- Community service.

04

WHERE DO I FIND CANDIDATES

- RISE Omaha - <https://www.seeurise.org/>
- Residential Correctional Facility -
fourthdcs.com/residential-information.html

05

WHAT INCENTIVES ARE AVAILABLE

- WOTC - Work Opportunity Tax Credit -
iowaworkforcedevelopment.gov/work-opportunity-tax-credit
- IowaWORKS Incentives -
iowaworkforcedevelopment.gov/employer-incentives

06

HOW DOES THIS HELP MY COMMUNITY

- Employment reduces recidivism
- Improves local economy
- Creates strong, able, contributing citizens and families

TIPS FOR HIRING THE JUSTICE-INVOLVED

COMPANY CULTURE

What is the culture of your workplace? Do your current associates think it is a culture with diversity and where everyone experiences inclusion? Do implicit biases exist? When you focus on intentionally developing your company's culture, you are taking a necessary first step to building a foundation for success when hiring any employee—especially those that have been justice-involved.

PEOPLE-FIRST POLICIES

Putting people first is a philosophy backed up by a set of actions that prioritizes the people of an organization above all else including shareholder value and profits. People want to feel valued, heard, appreciated, and respected.

DON'T JUST ASK. LISTEN.

When employers and employees listen to one another, they learn from one another. A free flow of ideas that are truly listened to can lead to a workplace where employees are constantly learning from each other. (1)

LANGUAGE

Remember that those with backgrounds have served their time and are working hard to get back into or start living as a productive law-abiding citizens. It's important to show them respect and support their dignity. Avoid using terms such as "criminal" or "offender" and instead opt for "justice-involved," "re-entry employee" or "background involved." Treat these potential associates as you would any other candidate.





TIPS FOR HIRING THE JUSTICE-INVOLVED

INTERVIEWING

Remove implicit bias by never asking someone if they have a criminal history during an interview. A gap of several years in a work history may be indicated but allow them to broach the information. Remain impartial if such information is disclosed.

Choose candidates for their merits and skills and have an open, respectful conversation about backgrounds when you offer the position. Allow them to share their experience and story.

APPLICATION FORMS

Your application process will be more inclusive if you remove the question(s) about felony charges or convictions from your application. Federal employers and federal contractors are prohibited from asking applicants about criminal convictions until a conditional job offer is made.

BACKGROUND CHECKS

There is a right way and a wrong way to read background checks. "Charged" with a crime and "convicted" of a crime are very different. Work with a re-entry employment specialist or justice case manager to understand the terminology in the background report. Allow the applicant to share their experience and story.

LEGAL IMPLICATIONS

The choice to become a second-chance employer implicates legal concerns both in terms of recruitment and in terms of employee and customer relations. Whether an employer chooses to be a second-chance employer or not, company recruiters should be cognizant that hiring decisions that consider the criminal background of justice-involved candidates must be based upon the individualized assessment.

In other words, blanket policies that prohibit the hiring of justice-involved individuals are not legally permissible. Why? While 1 in 17 Caucasian men will spend time in prison at some point, the rate is 1 in 6 for Hispanic men and 1 in 3 for African-American men. As a result, blanket prohibitions on hiring justice-involved individuals have a disparate impact upon a member of racial and ethnic minorities and can violate Title VII of the Civil Rights Act of 1964. At the same time, this individualized assessment should consider the

nature of the work and customer care environment. Employers should be aware of federal and state hiring regulations that may impact the hiring of certain justice-involved individuals for particular positions. Beyond compliance with specific regulatory mandates, employers should also keep in mind potential liability for negligent hiring. Liability for negligent hiring can arise when an employee causes harm to another while in service to the employer and when the specific danger results in injury.

For example, if an employer knew that an employee had previously been convicted of assault and battery and the employee later assaulted a customer, the employer could face liability for negligent hiring. Of course, such an analysis would consider the same factors that an employer should be weighing in any event when considering the background of a justice-involved individual.



LEGAL GUIDELINES

Second-chance employers should consider the following steps when weighing the hiring of justice-involved individuals:

- Know your parameters. Do federal and/or state regulations place particular limits on hiring for positions in your industry?
- Train recruiters and hiring managers. All individuals involved in considering the impact of prior criminal history on hiring should understand how both the legal parameters and the company's own values impact these decisions.
- Make individualized decisions, weighing the nature and gravity of the offense(s), the time that has passed since the conviction and/or the individual's release from incarceration, the nature of the job held or sought, and applicable state and federal statutes and regulations. Avoid considering prior arrests (unless recent), which were not followed by convictions, and dismissed charges. Carefully consider whether expunged records should be included as a factor in hiring decisions.
- Whether a successful hire or not, treat each hired justice-involved individual as an individual, avoiding assumptions about this group as a whole based on singular experiences. Please consult your counsel if you have any questions about employment law.

COMPLIANCE

As with other hiring decisions, there are boundaries placed on employers when hiring individuals with a background in the justice system. The Equal Employment Opportunity Commission and the Fair Credit Reporting Act provide resources and guidance when making hiring decisions. These resources should be utilized to maximize opportunities and foster an inclusive environment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

The EEOC has long taken the position that the use of an individual's criminal history may result in prohibited discrimination based upon race and national origin under Title VII of the Civil Rights Act of 1964. Discrimination could occur if an employer utilizes criminal conviction history against only certain individuals based on their race or national origin. However, the EEOC goes further to point out that a neutral policy of excluding certain applicants based upon criminal conviction history may also be unlawful if it results in a disparate impact on individuals protected under Title VII.

Therefore, the EEOC requires employers to establish that the exclusion of individuals with criminal convictions must be job related and consistent with business necessity. Employers should conduct an individualized assessment to determine whether the conviction would be disqualifying. Employers should consider: 1) the nature and gravity of the offense or conduct; 2) the time that has passed since the offense, conduct and/or completion of the sentence; and 3) the nature of the job held or sought. The EEOC guidance states that conducting an individualized assessment will reduce the likelihood disparate impact discrimination will occur. More information regarding the EEOC Enforcement Guidance can be found at www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

FAIR CREDIT REPORTING ACT (FCRA)

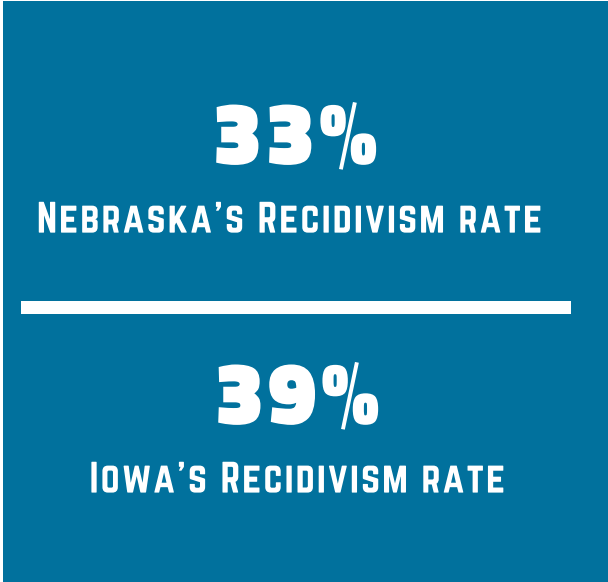
The Fair Credit Reporting Act requires employers who use third-party service providers (consumer reporting agencies or background checking companies) to conduct criminal background checks or credit checks on applicants or current employees to follow strict procedures of providing notice, disclosure, and consent by the applicant/employee before taking any adverse action against the applicant/employee. Employers utilizing third-party service providers to conduct criminal or credit background checks should be careful to utilize the forms provided by the Federal Trade Commission and/or the third-party service provided to ensure compliance. Employers must obtain the consent of the applicant/ employer before running the background check and then if the background check reveals information that disqualifies the applicant/employee from employment, employers must follow the procedure to provide a pre-adverse action notice and an adverse action notice. The employee also has the right to a copy of the results of the background check and instructions on how to contest the information with the third-party service provider. More information regarding the requirements of the FCRA can be found at www.ftc.gov.



COMPLIANCE

NUMBERS & STATISTICS

- Incarceration is costly to the Midwest- it costs over \$37,000 to incarcerate 1 person for 1 year
- 89% of people that re-offend do not have a job at the time of their re-offense
- 70% of children with incarcerated parents will follow in their footsteps



INCENTIVES AND SUPPORT

There are several incentives and support programs available to assist employers in mitigating risk when hiring an individual with a justice-involved background. Just as important, there are services made available to those individuals to help them successfully transition to a new career opportunity.

FEDERAL BONDING PROGRAM

The Federal Bonding Program provides important support for justice-involved individuals and other challenged job seekers, helping them secure employment and stay employed. The program primarily targets justice-involved individuals – people who have been previously incarcerated and are returning to the community – and other job seekers who have faced difficulties in finding employment. Bonds can be applied to any job with any employer, in any state, and covers any employee dishonesty committed on or away from the workplace. Full- or part-time employees receiving paid wages

(with Federal taxes automatically deducted from pay) can be bonded, including those hired by “temp agencies.” Bonds can also be purchased to cover already employed workers who need bonding to prevent being laid off or to secure a transfer or promotion to a different job with a current employer. It is important to note: EMPLOYEES MUST APPLY FOR THE BOND, not employers.

Additional information and forms are located at <https://www.iowaworkforcedevelopment.gov/federal-bonding>

WORK OPPORTUNITY TAX CREDIT

The Work Opportunity Tax Credit (WOTC) is a federal tax credit program available to employers who hire new employees from targeted groups that have historically had difficulty finding employment. This includes but is not limited to veterans, people who qualify for vocational rehabilitation, and the formerly incarcerated. The credit is used to reduce the federal tax liability of private for-profit employers.

WOTC TAX SAVINGS

- WOTC reduces an employer's cost of doing business by decreasing their federal income tax liability between \$2,400.00 and \$9,600.00 per employee, depending on the target group identified and hours worked during the first year of employment..

The Target Group Ex Felon has these specifics-

An Ex Felon has been convicted of a felony under any federal or state law and is hired not more than 1 year after the conviction or release from prison for that felony.

Deferred Adjudication-definition clarified to treat an individual as convicted if a State Court placed the individual on Probation without finding of guilty (but only if the court considers this to have been a "conviction" -a deferred adjudication)

Ex-Felons participating in a transitional program (e.g. Work Release) are eligible for the WOTC program if they are convicted of a felony and served a jail sentence as defined above

Individuals convicted of a felony while in Military service also may be eligible under the ex-felon target group

For Ex Felons serving time in a halfway house as part of their sentence, the release date may be one year from the date they completed their time in the halfway house.



- For employers to earn a WOTC , the new employee must work at least 120 hours during the first year of employment and have not worked previously for the employer. Employers can claim the WOTC on an unlimited number of qualified employees each year.



Applying for WOTC Certification

The employer must complete IRS Form 8850 (PreScreening Notice and Certification Request) and the ETA Form 9061 (Individual Characteristic Form) by the date of the job offer. The ETA Form 9062 is to be only used and completed by the state workforce agency (SWAs).

Businesses can also mail or fax applications and supporting documentation to the following locations:

WOTC Unit
IowaWORKS
200 Army Post Road, Suite 44
Des Moines, IA 50315
Fax: 515-242-0487

CONTACT INFORMATION:
Work Opportunity Tax Credit Coordinator
Iowa Workforce Development
Division of Workforce Services
phone: 515-281-7538
Email: wotc.coordinator@iwd.iowa.gov

INFORMATION SOURCES

Greater Oklahoma City Chamber - <https://www.okcountycjac.com/post/fair-chance-hiring-toolkit-for-businesses>

Recidivism Rates - <https://worldpopulationreview.com/state-rankings/recidivism-rates>

RISE - <https://www.seeusrise.org/>

(1) Art of Listening - <https://www.eskill.com/blog/art-listening>

(2) Work Institute - <https://workinstitute.com/retention-report/>

(3) Greater Omaha Chamber - Talent Availability and Job Market '22 Q3 Report - shorturl.at/dvy09

ADDITIONAL RESOURCES

US DEPARTMENT OF LABOR - ETA

<https://www.dol.gov/agencies/eta/wotc/resources>

EEOC - Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act

<https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>

FAIR CREDIT REPORTING ACT

<https://www.ftc.gov/enforcement/statutes/fair-credit-reporting-act>

IowaWORKS EMPLOYER INCENTIVES

<https://www.iowaworkforcedevelopment.gov/employer-incentives>

INTERNAL REVENUE SERVICE

<https://www.irs.gov/businesses/small-businesses-self-employed/work-opportunity-tax-credit>

SECON CHANCE EMPLOYMENT TOOLKIT FOR EMPLOYERS <https://www.shrm.org/about-shrm/news-about-shrm/pages/shrm-foundation-introduces-getting-talent-back-to-work-certificate.aspx>

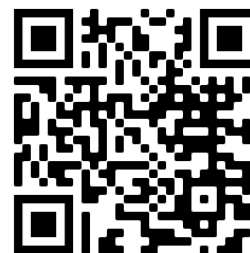
RISE - <https://www.seeusrise.org/>

HARAM - <https://www.hram.org/>

WOTC FORM 9061



IRS FORM 8850





TOOLKIT FOR BUSINESSES

SECOND CHANCE HIRING

149 W BROADWAY
COUNCIL BLUFFS, IA 51501
WWW.COUNCILBLUFFSIOWA.COM