

# The Redemption & Retention Gateway

How Ohio employers can hire and keep the best workers — even if they have criminal records



There is a clear path for employers that simply want to **hire the best workers**, regardless of their past criminal records. At least 1 in 6 Ohioans—over 16% of our available workforce—has a criminal record. Many of these people are eager to compete in the labor market and contribute to your bottom line. This guide will navigate you through the gateway to finding this grateful and loyal talent.

## THE FIRST GATEPOST

*Compliance with federal hiring laws made easy*

### Title VII & the EEOC

Winning the best talent for your company goes hand-in-hand with EEOC compliance. That federal agency requires that any criminal-record-based hiring exclusion be job related and consistent with business practices. Courts have ruled that categorically excluding job applicants based on criminal records *may violate Title VII of the Civil Rights Act*, because such a policy often has a racially disparate impact.

In April 2012, the U.S. EEOC updated its guidance on how it enforces that law. Instead of using categorical exclusions, the EEOC strongly encourages employers to individually assess criminal records using three factors:

- The nature and gravity of the offense or conduct;
- The time that has passed since the offense and completion of any sentence; and
- The nature of the job held or sought.

BMW settled an EEOC lawsuit in September 2015 for \$1.6 million because of its use of categorical exclusions.



### GET THE DETAILS

The EEOC's 2012 enforcement guidance:  
[bit.ly/EEOCcrimrecs](http://bit.ly/EEOCcrimrecs)

### Don't rely on mere arrests

PepsiCo settled a 2012 EEOC complaint for \$3.1 million, in part, because the company used arrests to bar prospective workers from a bottling plant. Arrests are not proof of criminal conduct. In the courtroom and in the interview room, everyone must be presumed innocent until proven guilty.

### Background checking and the FCRA

The Fair Credit Reporting Act (FCRA) governs commercial background-checking companies and the employers that use their services. The FCRA is enforced by the Federal Trade Commission (FTC). The law *requires* employers to give job applicants certain information:

1. Written notice of intent to check criminal records
2. Written authorization from applicant to do the check
3. A copy of standard FCRA notice form

*If the employer intends to reject the applicant, they must give:*

4. Notice of the adverse decision
5. A copy of the background check itself
6. Contact info for the background-checking agency



### READ FURTHER

The FTC's advice for employers:  
[bit.ly/FCRA-crimrecords](http://bit.ly/FCRA-crimrecords)

### Incomplete & inaccurate background checks

Not all background-checking services—whether an online company or a governmental entity—are reliable. A recent report details the numerous kinds of errors seen in the background-checking industry.



### LEARN MORE

National Consumer Law Center report:  
[bit.ly/NCLC-BrokenRecords](http://bit.ly/NCLC-BrokenRecords)

Don't lose your best candidates and expose yourself to liability over a mistake by one of these companies. The FCRA *requires* employers give applicants a reasonable time to seek corrections from the background-checking agency.

## THE SECOND GATEPOST

*A single solution for two legal issues*

### Negligent hiring

Fear of litigation need not hold you back from hiring job applicants with records. Lawyers and insurers sometimes warn employers about *negligent hiring* lawsuits; that is, an accusation that the *employer should have known*—based on a past criminal record—that an employee who caused some injury was a dangerous or untrustworthy person.

These cases are extremely rare. And OJPC's research has found no Ohio case where an employer lost such a case on appeal. A 2012 survey of human resource managers, however, found that concern about negligent-hiring liability was the #1 reason companies conducted criminal-record checks.



HEAR FROM YOUR PEERS  
SHRM's 2012 survey results:  
[bit.ly/SHRM-2012](http://bit.ly/SHRM-2012)

### Government regulations restricting your ability to hire

Even when an employer believes in an applicant's redemption and is ready to hire, there may be local, state, and federal laws that prevent them from doing so. These statutes and regulations are sometimes called "collateral sanctions;" they affect public and private employers in dozens of industries. OJPC maintains an online database of collateral sanctions in Ohio state law.



THE BEST TOOL  
The Ohio Civil Impacts of Criminal  
Convictions Database:  
[CIVICohio.org](http://CIVICohio.org)

A similar database of federal collateral sanctions is available at: [www.abacollateralconsequences.org](http://www.abacollateralconsequences.org)

### CQEs: the solution for negligent-hiring & regulations

Ohio employers have the opportunity to maximize their talent pool by relying on the fairly new **Certificates of Qualification for Employment (CQEs)**. Businesses cannot be sued for negligent hiring when they take on workers that have CQEs. And these workers cannot be categorically excluded from jobs and job-related licenses by over-restrictive regulations. Find links for more about CQEs on the last page of this guide.

## PASSING THROUGH THE GATE — PART I

*The Redemption & Retention Checklist*

This checklist will help you build a solid hiring policy — one that allows you to **get the best workers** without being held back by criminal-record issues. Using this checklist will help you comply with the EEOC and the FCRA, and avoid negligent hiring and hiring restrictions — all so you can **grow your talent base**. The last section includes four programs that make hiring people with criminal records an **even better deal for your company**.

### Before you start hiring

- ☐ Assess which job positions actually need criminal-record checks and which do not.
- ☐ For jobs that you decide *do* warrant a record check, assess what crimes are relevant to each job's responsibilities.
- ☐ Choose a reasonable "look-back" period. The likelihood of someone committing a new crime drops off dramatically as they have more and more years between them and their last offense.



GO TO THE SOURCE  
The best available research on  
"redemption" time and re-offending  
<http://1.usa.gov/Redemption2010>

- ☐ Choose a reputable background-checking company by asking hard questions: how many data points do they match before reporting a criminal record? How often do they update their data?

### Job posting and application form

- ☐ Do not scare off potentially excellent candidates with language such as "no felons" or "clean background check required." Only warn about criminal-record barriers in posting if regulation absolutely bars people with specific convictions.
- ☐ Remove the question about criminal record from job application.

### Interviewing & evaluating applicants

- ☐ Give written notice that you will do a criminal-record check & get written permission to do so.
- ☐ Do not request or review arrest-only information.
- ☐ Give a copy of criminal-record check to the candidate and give them a reasonable time to correct it if something is wrong.
- ☐ Discuss criminal records at interview.
- ☐ Do not require applicants to get their record sealed or expunged if you are not absolutely certain they are legally eligible.
- ☐ If you intend to reject the applicant based on criminal records, give the required FCRA notice of adverse action.

### Use the EEOC factors to guide your discretion

- ☐ How many convictions are on the applicant's record? How serious are they?
- ☐ How old are the offenses? How old was the person when they committed the offenses?
- ☐ What has the person done to distinguish him- or herself since completing their last criminal sentence?
- ☐ Do the offenses relate to the job responsibilities?

### Record checks on current workers

- ☐ As above, comply with FCRA requirements when requesting the record check and use the EEOC factors above to appropriately weigh the seriousness of the criminal records.
- ☐ Presume current employees with a good track record are fit to stay. If the law has not changed and an employee has been consistently performing well, *do not dismiss* them simply because you have a new HR system, contractor, or policy.
- ☐ If a law has changed, ask the regulatory agency about ways to keep your existing workforce; there are sometimes "grandfathering" provisions for existing workers.

***"U.S. business needs all its qualified and able workers involved to compete..."***

*"I have focused my business practice on creating a level playing field for individuals who are shut out of employment due to a blemish on their record."*

*"Nehemiah is proof that fair hiring works: It not only helps people, but it is profitable. Our turnover rate is lower than any business could ask for."*



**DAN MEYER**

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## PASSING THROUGH THE GATE — PART II

*Four incentives for hiring workers with criminal records*

### Peace of mind — for you and your insurer

- ☐ **Use the Federal Bonding Program.** This program, administered in our state by the Ohio Department of Rehabilitation and Corrections, offers employers a **\$5,000 bond** that last for 6 months. It can be cover any employee with a criminal record that is initially deemed a risk to the company. The employer applies for this.



**GET THE FORMS**  
[bit.ly/OhioFedBonding](http://bit.ly/OhioFedBonding)  
[www.bonds4jobs.com](http://www.bonds4jobs.com)

### Money in your pocket

- ☐ **Use the Work Opportunity Tax Credit.** This program, administered in our state by the Ohio Department of Job & Family Services, offers employers a tax-credit of up to \$2,400 per eligible worker. An eligible worker includes people with felony records within 1 year of their release from prison. The employer applies for this.

**WOTC**

**GET THE FORMS**  
[jfs.ohio.gov/wotc](http://jfs.ohio.gov/wotc)

### Avoid regulations and liability

- ☐ **Use Certificates of Qualification for Employment (CQEs).** This is a fairly new benefit for employers and workers, only available since 2013. The job seeker can get it before applying to work for you, or after getting hired. It has **two legal effects**:
  - ▶ CQEs overcome state laws and regulations that set up mandatory barriers to jobs or licenses. CQEs are issued by judges for particular licenses or fields of employment. For example, if a state law prohibited a hospital from employing a job candidate with certain felony convictions, the hospital could hire that candidate if he or she had a CQE that targeted the relevant state law.
  - ▶ CQEs also give the employer **negligent-hiring immunity**. If you hire someone with a CQE, you cannot be sued because you *should have known* the employee was dangerous or untrustworthy based on the past criminal record.



**LEARN MORE**  
[bit.ly/OJPC-CQE1pg](http://bit.ly/OJPC-CQE1pg)

## Find skilled, loyal workers

- **Use workforce intermediaries.** In recent years, many private non-profits, public agencies, and some academic institutions have pioneered a model for meeting the needs of both job seekers and employers. These entities go beyond job matching, often providing multiple kinds of support to keep your employees on the job even when challenging situations arise. Some intermediaries go even further, developing HR systems, career ladders, and other job-quality features with individual employers and whole industry groups.

Many workforce intermediaries in Ohio now specialize in serving job seekers with criminal records, and supporting employers after they've made the hire. Here are some examples from the **Cincinnati region**:

### **The Greater Cincinnati Urban League**

www.gcul.org  
513-281-9955

### **Cincinnati Works**

www.cincinnatiworks.org  
513-744-9675

### **The HELP Program**

www.helpprogramcincinnati.net  
513-961-0027

### **JobsPlus** (part of City Gospel Mission)

citygospelmission.org/job-readiness  
513-241-1800

### **The Community Action Agency — Fresh Start program**

www.cincy-caa.org  
513-924-2031



## STATEWIDE RESOURCE

www.ohiomeansjobs.com

The logo for the Franklin County Reentry Coalition features a white star on a blue background, with the text "Franklin County" and "Franklin County Reentry Coalition" below it.

## MAKE A CONNECTION

Intermediaries in greater Columbus  
[bit.ly/Workforce-Columbus](http://bit.ly/Workforce-Columbus)

## MORE INFORMATION

The checklist is built off of the National HIRE Network's *Best Practice Standards: The Proper Use of Criminal Records*, available online at <http://bit.ly/BestPractices-CrimRec>.

### **Did you know?**

In June 2015, Governor Kasich's administration *voluntarily* adopted nearly all of the practices outlined in this guide, for state-government hiring. You can review the Department of Administrative Services' full policy (HR-29) along with an FAQ section, implementation guide, and model forms at <http://bit.ly/DAS-HR29> (scroll down to "Disclosure of Criminal Convictions").

### **Share this everywhere!**

OJPC is eager for you to share this anywhere you want. You can always get the most up-to-date version of this guide online at <http://bit.ly/RedemptionRetention>. This version was published on **September 23, 2015**.

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OJPC is dedicated to creating fair, intelligent, and redemptive criminal justice systems through zealous client-centered advocacy, collaborative policy reform, and empowering community education. We are a non-profit law office based in Cincinnati and working all across the state.

Find out more at [www.ohiojpc.org](http://www.ohiojpc.org). Connect with us on Facebook (/ohiojpc).