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Federal Agency Says Criminal Background Checks Are Discriminatory

The Equal Employment Opportunity Commission, or EEOC, the federal agency tasked with enforcing federal anti discrimination laws, initiated lawsuits against two major Companies. The EEOC charges that these two companies, Dollar General Corp – the largest small-box discount retailer in the United States, and the U.S. unit of BMW, violated Title VII of the Civil Rights Act by discriminating against black job applicants and employees by subjecting them to onerous criminal background checks. Title VII makes it illegal for employers to discriminate against employees or job applicants on the basis of race, color, sex, religion or national origin. Employers are liable under Title VII even if the discrimination is unintentional but has the effect of being discriminatory. Here, the EEOC contends that a strict criminal background policy tends to discriminate against blacks, who are convicted of crimes more often than whites.

For example, the EEOC allegations against BMW were the result of their conducting of criminal background checks on all the employees currently working at the warehouse; some of whom had been employed there for more than a decade. It was the company's policy not to employ anyone with a criminal record within the past seven years. All employees at the facility who had a criminal record within this period were immediately fired. Blacks made up 55% of the employees at the warehouse, yet 70 out of the 88 of the workers fired were black. The EEOC claims that the BMW policy is a "blanket exclusion without any regard for the nature and gravity of the crimes."

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The EEOC has recently taken a hard stance on so called discriminatory background checks. Their position is a controversial one. Numerous state attorney generals have opposed the EEOC's actions in this matter and have asked the agency to discontinue their case against these companies. More than 92% of employers use criminal background checks when hiring new employees. Such checks can be essential to ensure the safety of your employees and customers, as well as to your bottom line. The EEOC is not claiming that all criminal background checks are discriminatory, only where they cannot be justified with a bona fide business reason. They recommend that employers consider the crime, its relation to the applicant's potential job, and how much time that has passed since the conviction.

If you have any additional questions or concerns regarding your criminal background check policy please feel free to contact me.



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