LEGAL MINUTE

Complying with Opposing Laws: Arrest and Conviction Record Discrimination versus Negligent Hiring

Under arrest and conviction record discrimination laws, an employer can be held liable for refusing to hire an individual based on his or her criminal record. On the other hand, under the tort of negligent hiring, an employer can be held liable for hiring someone with a criminal record. What are employers to do?

What is a claim for negligent hiring?

Employers can be liable for negligent hiring, training, or supervision of an employee if the employer's failure to exercise due care was a cause in fact of the wrongful act of the employee that in turn caused the plaintiff injury. An example would be a claim for negligent hiring of a delivery person based on the person's driving record when the person gets into an accident while driving on the job. The claim is that the employer should have known that the person posed an unreasonable risk to safety when hiring him or her for the position.

What is arrest and conviction record discrimination?

There are three categories of criminal misconduct relating to employment discrimination: arrest records, pending charges, and conviction records. Each category is defined differently, and employers are subject to different restrictions and exceptions regarding employment decisions depending on the stage of the criminal proceeding. For example, an employer cannot refuse to hire a person as a delivery driver solely because the person was arrested for a DUI.

The Takeaway

It is important to be cognizant of the legal and practical risks of hiring—and not hiring—an individual with a criminal background of any kind. In complex or nuanced cases, it is advisable to speak with your attorney regarding the best way to proceed.

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ATTORNEY NICOLE MARKLEIN

CROSS JENKS MERCER & MAFFEI LLP
221 THIRD AVENUE P.O. BOX 556
BARABOO, WI 53913
TEL: 608-356-3981
EMAIL: NMARKLEIN@CJMMLAW.COM