

**GREATER MEMPHIS LOCAL WORKFORCE DEVELOPMENT BOARD (GMLWDB)**

**GREATER MEMPHIS LOCAL WORKFORCE DEVELOPMENT AREA**

EFFECTIVE DATE: July 1, 2020  
DURATION: Indefinite  
POLICY: Employer Assistance as It Relates to Criminal Record Restrictions  
PURPOSE:

The purpose of this Policy is to provide information about exclusions based on criminal records, and how they are relevant to the existing nondiscrimination obligations for the public workforce system and other entities that receive federal financial assistance to operate Job Banks, to provide assistance to individuals in locating and obtaining employment and to assist employers by screening and referring qualified applicants. This Policy is intended to help GMLWDA (and its employer clients) comply with nondiscrimination obligations when serving the population of individuals with criminal records, and to ensure that exclusionary policies do not conflict with GMLWDA's efforts to promote employment opportunities for such applicants.

**APPLICABLE STATUTES, REGULATIONS, AND GUIDANCE:**

- A. Title VII of the Civil Rights Act of 1964, as amended, codified at 42 U.S.C. 2000e et seq. applies to employers with fifteen (15) or more employees and prohibits employment discrimination (both disparate treatment and disparate impact) based on race, color, religion, sex, or national origin; See also Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, U.S. Equal Employment Opportunity Commission (April 25, 2012), [http://www.eeoc.gov/laws/guidance/upload/arrest\\_conviction.pdf](http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf).
- B. Title VJ of the Civil Rights Act of 1964, codified at 42 U.S.C. 2000d, applies to all programs or activities receiving federal financial assistance, such as GMLWDB, and prohibits any program or activity from excluding from participation in or denying the benefits of the program, or otherwise subjecting anyone to discrimination, on the ground of race, color, or national origin. Under Title VI, GMLWDB may not use any "criteria or methods of administration that have the effect of subjecting individuals to discrimination because of race, color, or national origin." See 29 C.F.R. 31.3(b)(2). In addition, the "selection, and referral of individuals for job openings or training opportunities and all
- C. other activities performed by or through employment service offices" must be done without regard to race, color, or national origin. See 29 C.F.R. 31.3(d)(1)(i).

- D. Workforce Innovation and Opportunities Act states that no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief. Further, Workforce Innovation and Opportunities Act (WIOA) prohibits recipients from using "standards, procedures, criteria or administrative methods" that have the purpose or effect of subjecting individuals to discrimination on a prohibited ground due to the recipients' administration of programs providing aid, benefits, services, training or facilities "in any manner." See 29 C.F.R. 37.2(a)(2) and 29 C.F.R. 37.6(d); See also 29 U.S.C. 2938.
- E. Wagner-Peyser Act requires states to "assure that discriminatory job orders will not be accepted except where the stated requirement is a bona fide occupational qualification ("BFOQ"). See 20 C.F.R. 652.8(j)(2).
- F. U.S. Employment and Training Administration Training and Employment Guidance Letter No. 31-11, U.S. Department of Labor Employment and Training Administration in conjunction with the Civil Rights Center (May 25, 2012).

#### **BACKGROUND:**

The federal government has determined that (i) one in three adults now has a criminal history record - which often consists of an arrest that did not lead to a conviction, a conviction for which the person was not sentenced to a term of incarceration, or a conviction for nonviolent crime; (ii) racial and ethnic disparities are reflected in incarceration rates; and (iii) racial and ethnic disparities may also be reflected in other criminal history records.

Because of these racial and ethnic disparities, employers and agencies within the public workforce system should be mindful of federal anti-discrimination laws if they choose to rely on job applicants' criminal history records as a tool to help assess the potential risk to employees, customers, and business assets. Hiring policies and practices that exclude workers with criminal records may run afoul of federal anti-discrimination laws, which prohibit both intentional discrimination on the basis of race, national origin, or other protected bases, and policies or practices that have a disparate impact on these protected groups and cannot be justified as job-related and consistent with business necessity. Policies that exclude people from employment or other services based on the mere existence of a criminal history record and do not take into account the age and nature of an offense, for example, are likely to unjustifiably restrict the employment opportunities of individuals with conviction histories and, due to racial and ethnic disparities in the criminal justice system, are likely to violate federal anti-discrimination law. Accordingly, employers and agencies within the public workforce system should carefully consider their legal obligations before adopting such policies.

The nondiscrimination provisions that apply to the federally assisted workforce systems prohibit both "disparate treatment" - intentionally treating members of protected groups differently based on their protected status - and "disparate impact" - the use of policies or practices that are neutral on their face, but have a disproportionate impact on members of protected groups, and are not job-related and consistent with business necessity. Although individuals with criminal history records are not a protected group under the applicable federal

laws, antidiscrimination laws may be implicated when criminal records are being considered. Because of racial and ethnic disparities reflected in the criminal justice system, these policies or practices will likely have a disparate impact on certain protected groups and violate federal law.

#### **SCOPE:**

This Policy applies to all jobs available through GMLWDB without regard to whether the jobs are in government or the private sector.

#### **POLICY AND REQUIREMENTS:**

In light of GMLWDB's legal obligations discussed above, this Policy establishes the following steps to aid compliance with federal nondiscrimination laws to prevent discrimination and promote employment opportunities to formerly-incarcerated individuals and other individuals with criminal records.

##### **A. Posting Job Announcements**

When soliciting or obtaining from employers, for posting on-site or on GMLWDB's website or Job Bank, job postings or vacancy announcements that take criminal records into account, WM S's Business Services staff shall comply with the following procedures:

1. When an employer registers with GMLWDB for job posting services, GMLWDB's Business Services staff shall provide to the employer Notice #1 attached to this Policy. This notice explains that GMLWDB must comply with federal civil rights laws, which, due to the likely disparate impact of criminal record exclusions on protected groups, generally prohibit categorical exclusions of individuals based solely on an arrest or conviction history. The notice also provides information to employers about their obligations under the Fair Credit Reporting Act, which requires employers to obtain applicants' permission before requesting a criminal history report from a background screening company and to provide applicants with a copy of the report and a summary of their rights before taking adverse action. Additionally, the notice describes the Work Opportunity Tax Credit and the Federal Bonding Program, two incentives that support employers' hiring of individuals with conviction histories;
2. Use a system (automated or otherwise) for identifying vacancy announcements that include hiring restrictions based on arrest and/or conviction records or other discriminatory languages in job postings;
3. Upon identifying job announcements that exclude individuals based on arrest and/or conviction history, provide employers that have posted these vacancy announcements the notice that is attached to this Policy as Notice #2. This notice states that in order to ensure that the employer and covered entity are in compliance with federal civil rights laws; the employer will be given the opportunity to remove or edit the vacancy announcement. The notice and opportunity to remove or edit should be provided to the employer whether the vacancy announcement has been posted directly with GMLWDB or has instead been made available on job postings through other means of aggregating job postings;
4. Post any vacancy announcements that contain language excluding candidates based on criminal history **only when** the vacancy announcement is accompanied by the notice to job seekers that is attached to this Policy as

Notice #3. This notice explains that the exclusions in the posting may have an adverse impact on protected groups, as set forth in the EEOC guidance. The notice further informs job seekers that individuals with criminal history records are not prohibited from applying for the posted position

5. Retain records of the notices sent to employers to address vacancy announcements containing hiring restrictions based on arrest and/or conviction records; and
6. Elect to take other steps that are at least equally effective in achieving compliance with GMLWDB's nondiscrimination obligations.

#### **B. Screening and Referral Based on Criminal Record Restrictions**

When screening or referring individuals for vacancy announcements, job orders, training, or other employment-related services, GMLWDB's Business Services staff shall comply with the following:

1. Refrain from screening and refusing to make referrals because an applicant has a criminal history record; and
2. When referring job seekers for employment opportunities where the job announcement takes criminal history into account, provide the job seeker with a copy of the job announcement and a copy of Notice #3 attached to this Policy.

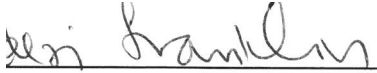
Inquiries about civil rights issues should be addressed to the Civil Rights Center, by phone at 202.693.6500 (voice) or 202.693.6516 (TTY); by relay at 800.877.8339 (TTY/TDD) or 877.709.5797 or myfedvrs.tv (video); or by email at [CivilRightsCenter@dol.gov](mailto:CivilRightsCenter@dol.gov). Complaints alleging discrimination by GMLWDB may be filed with the CRC by postal mail addressed to Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1423, Washington, DC 20210; [CRCEXternalComplaints@dol.gov](mailto:CRCEXternalComplaints@dol.gov) (email); or 202.693.6505 (fax). Further information about the discrimination complaint process is available on CRC's website at <http://www.dol.gov/oasam/programs/crc/external-enforce-complaints.htm>.

#### Attachments:

- Notice #1 for Employers Regarding Job Bank Nondiscrimination and Criminal Record Exclusions
- Notice #2 for Employers Regarding Job Posting Containing Criminal Record Exclusions
- Notice #3 for Job Seekers to be Attached to Job Postings with Criminal Record Exclusions
- Enforcement Guidance: Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, U.S. EQUAL EMP'T OPPORTUNITY COMM'N (April 25, 2012), Summary and Best Practices; for full guidance see [http://www.eeoc.gov/laws/guidance/upload/arrest\\_conviction.pdf](http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf)

#### **INQUIRIES**

Please contact Amber Covington, Executive Director, [acovington@memphischamber.com](mailto:acovington@memphischamber.com), with any questions or concerns regarding this policy.



Desi Franklin  
Workforce Midsouth, Inc. Board

10/23/2020  
Adopted Date

**GMLWDB is a proud partner of the American Job Center network, is an Equal Opportunity Employer. The Career Center System is an Employer/Equal Opportunity Program. Auxiliary aids and services are available upon request to individuals with disabilities. TTY: 1-800-848-0299**