



# BAN THE BOX GUIDANCE

Effective January 1, 2018, public employers (state, city, incorporated city or unincorporated town, town board, county and local level(s) of government) have a legal duty to ensure careful consideration and fairness to all qualified applicants (for classified and unclassified service) including those applicants that may have a criminal history or "record". Failure to do so may result in a NERC charge, investigation and settlement at employer's expense. There is also a potential for litigation at the state or federal level depending on certain facts.

**Exceptions: Peace officer and firefighter positions, positions that entail physical access to a computer or other equipment used for access to the Nevada Criminal Justice Information System or the National Crime Information Center**

## THE APPLICATION

- Applications should not ask if the applicant has been convicted of a felony or if the applicant has a criminal background.
- The application for employment **MUST** include a statement that:  
*A record of conviction will not necessarily bar the applicant from employment and the appointing authority (employer) will consider factors such as: 1) the length of time that has passed since the offense; 2) the age of the applicant at the time of the offense; 3) the severity and nature of the offense; 4) the relationship of the offense to the position for which the applicant has applied; and 5) evidence of the rehabilitation of the applicant.*

## THE INTERVIEW

- All qualified applicants should be asked questions related to the job duties (essential functions) and qualifications of the applicant. Certain applicants should not be randomly asked if they have a criminal background or "record". This may violate the Equal Employment Opportunity Commission's (EEOC) guidance on disparate treatment.

## THE FINAL INTERVIEW/ CONDITIONAL OFFER/ CERTIFICATION OF APPLICANT

- The criminal history of an applicant or other qualified person for a position may be considered after the final interview; a conditional offer has been extended; or, if applicable, the applicant has been certified by the administrator.
- It is at this point, the employer must consider disqualification of a candidate based on a criminal record that identifies a **CONVICTION** or **PENDING CHARGES** against the applicant that was filed six (6) months prior.

**IMPORTANT NOTE: Arrests [that did not result in conviction]; convictions that were dismissed, expunged or sealed; or an infraction or misdemeanor with no county jail time are not to be considered.**

## **DISQUALIFICATION BASED ON RECORD - CONSIDERATIONS**

Employers must consider the following factors (unless pursuant to a provision of state or federal law) if they plan to disqualify the applicant based on a record:

- 1) Whether any criminal offense charged against the person or committed by the person directly related to the responsibilities of the position for which the person has applied or is being considered;
- 2) The nature and severity of each criminal offense charged against the person or committed by the person;
- 3) The age of the person at the time of the commission of the offense;
- 4) The period of time between the offense and the application; and
- 5) Any information or documentation demonstrating the person's rehabilitation.

## **DISQUALIFICATION BASED ON RECORD - IN WRITING TO CANDIDATE**

If the criminal history of an applicant is used as a basis for rejecting an applicant or rescinding a conditional offer of employment, the rejection **MUST**:

- 1) Be in writing;
- 2) Include a statement indicating that the criminal history of the applicant was the basis for the rejection or rescission of the offer; and
- 3) Provide an opportunity for the applicant to discuss the basis for the rejection or rescission of the offer with the director of human resources for the appointing authority or a person designated by the director.

**If you have questions regarding this topic, contact  
the Nevada Equal Rights Commission**

Website: [www.detr.state.nv.us](http://www.detr.state.nv.us)

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