



August 8, 2011

Equal Employment Opportunity Commission
Commission Meeting
EEOC Executive Officer
131 M St., NE
Washington, D.C. 20507

RE: Employer Use of Criminal Background Checks

To the Equal Employment Opportunity Commission:

On behalf of the National Retail Federation (NRF), I am writing to express our interest in the reexamination of criminal background checks by the Equal Employment Opportunity Commission (EEOC). In the retail industry, background checks are widely utilized and provide a useful safety net as retailers seek to protect their employees, customers, and businesses.

As the world's largest retail trade association and the voice of retail worldwide, NRF's global membership includes retailers of all sizes, formats and distribution channels as well as chain restaurants and industry partners from the United States and more than 45 countries abroad. In the U.S., NRF represents an industry that includes more than 3.6 million establishments and which directly and indirectly accounts for 42 million jobs – one in four U.S. jobs. The total U.S. GDP impact of retail is \$2.5 trillion annually, and retail is a daily barometer of the health of the nation's economy.

NRF strongly believes that hiring practices should be fair and equitable for both potential and existing employees. This is especially true during such a challenging economic time. At the same time, a background check is an important resource for employers who seek to provide a safe and stable work environment. It is an important tool in making sure that we fulfill our obligation to employees and customers.

NRF believes that the criminal background question on employment applications serves as a valuable screening tool and needs to remain on the employment application. This information is as relevant as an applicant's education, previous employment experience and any formal training. We believe the potential employer has the right and responsibility to know who they are putting into their workplace to represent their company. Removing a first line of defense, specifically the criminal background history question, on an employment application, leaves retailers, shoppers and the entire business community nationwide at a disadvantage. If an applicant identifies they have a prior conviction many factors are taken into account while their application is being considered. These factors include age, date of the offense, seriousness and nature of the violation, as well as rehabilitation. Of course, the relevance of the conviction and open position are considered.

During the month of July, NRF researched the use and scope of criminal background screening in the retail industry. The survey collected information from 96 companies, ranging from restaurants to department stores to specialty retailers and grocery stores. The survey found that 97 percent of retailers utilize background screening as part of their applicant hiring process and 87 percent use criminal record checks. The positions most commonly screened using a criminal

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background history include Store Manager (96 percent), Senior Executive (96 percent), Distribution Center Employee (95 percent), Assistant Store Manager (94 percent). Other positions screened include Store Associates, Corporate Employees and third party contractors.

Transparent criminal history provides an effective way of protecting employees and customers within the bounds of the law. This responsibility is not just one of morality, but also a legal requirement. When the Occupational Safety and Health Administration says that "violence in the workplaces is a serious safety and health issue" and that the General Duty Clause requires employers to provide a place of employment free from hazards that could cause death or serious physical harm, criminal background checks help employers fulfill their duty.

This responsibility set forth by the Federal Government is complicated by the various state laws that all have different requirements in how to handle background checks. This can lead to confusion for employers who have facilities in more than one state. As employers seek to follow these various laws, they also have a responsibility to demonstrate that due diligence has taken place in their hiring practices in order to protect themselves against liability should something happen in their facilities.

In the retail industry, there are positions that cover a spectrum of responsibilities. Just a few examples include drivers, salespeople on the floor, buyers of the products that are sold, accountants, attorneys, human resource professionals, and security personnel. Many of these employees have responsibilities that involve handling cash and credit cards of customers and vendors. Employees who perform accounting services have access to confidential company and customer financial information. Employees working in human resources have access to a myriad of personal information about fellow employees. Loss Prevention professionals investigate theft issues, work with homeland security and manage the safety and security of customers, employees and assets.

Retail employers big and small promise the delivery of goods and services. They hire personnel that drive on public roads and often enter customers' homes. Delivery drivers are entrusted with company vehicles and often handle thousands of dollars worth of goods for delivery. In the case of prepared food delivery, drivers are also likely to handle cash on a regular basis. These employees are entrusted with not only the company's money and products, but by customers who hope such individuals will not harm person or property.

The retail industry wants to keep our workplaces safe, from both internal and external factors which could cause harm. Criminal background checks are an important tool, and we ask the Commission to reaffirm earlier interpretations of the guidelines which permit the question about criminal history and the use of criminal background checks which serve as a first line of defense. We also request that the Commission continue to recognize employers that are creating workplace policies in good faith and in a fair manner that balance with real needs of the business.

Thank you for your consideration of our views as the EEOC reviews the use of criminal background checks for existing and potential employees. NRF would be happy to answer questions you may have or provide more insight from the retail perspective.

Sincerely,

A handwritten signature in black ink, appearing to read "David French", with a stylized flourish at the end.

David French
Senior Vice President
Government Relations