



# Legal Minute

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## **Tips on Hiring Employees and Using Volunteers With Criminal Convictions**

*by Toya Cirica Cook Haley, Esq.*

Nonprofit organizations often work with prospective employees or volunteers who have criminal convictions. In addition to hiring employees who have criminal convictions, a nonprofit may use volunteers who are obligated to spend a certain number of hours fulfilling community service requirements as a condition of probation from a criminal conviction. Employers considering hiring an employee or working with a volunteer who has a criminal conviction need to be aware of how a criminal conviction can impact an individual's relationship with the nonprofit, including how the individual is supervised while on the job. This article takes a closer look at the hiring and managing of employees and volunteers who have criminal convictions.

### **How Does an Employer Know Whether a Prospective Employee Has a Criminal Conviction?**

As long as the information sought is job-related and justified by business necessity, employment applications should include a question about convictions. (Employment applications should not inquire about arrests—only convictions.) The application should also include a statement that information about a criminal conviction will not necessarily bar employment. If an applicant has a criminal conviction, the employer needs to be sure to ask during the interview process about any court-ordered workplace limitations that have been placed upon the applicant and any workplace risks that might be associated with the failure to follow such restrictions.

### **What Criminal Background Information Can an Employer Obtain on Prospective Employees?**

Employers should not obtain further criminal background information from applicants until a prospective offer of employment is made. Employers should adopt formal policies and procedures regarding the gathering of criminal background information. Policies and procedures should be consistently applied to avoid claims of discrimination.

Before obtaining a criminal background check, employers should obtain a release and consent form from the prospective employee. The Texas Department of Public Safety (DPS) has a specific form for driving records. DPS can only release additional information to agencies or entities that have specific legal authority to receive the information. Employers who obtain criminal history should ensure that the information is disclosed only to others within the organization for the purpose of making a determination regarding the applicant's suitability for employment.

## **Which Employers Must Conduct a Criminal Background Check?**

Some employers are limited by statute from employing individuals with certain convictions. For example, employers operating nursing homes, rental properties, and child care facilities are prohibited from employing individuals with certain convictions.

## **How Does Community Supervision Affect an Employee or Volunteer?**

Individuals placed on community supervision following incarceration or as an alternative to incarceration may have workplace restrictions as a condition of their probation. These restrictions are directly related to the criminal activity for which the individual was convicted. Examples of restrictions include:

- (a) prohibiting or limiting contact with children, the elderly, or the mentally or physically disabled;
- (b) prohibiting driving or allowing driving only under limited circumstances; and
- (c) restricting access to cash, payroll, and accounting activities.

These restrictions are set forth in the order of probation, and the applicant must notify his probation officer when the restrictions would be applicable in an employment opportunity.

After learning that an applicant is on community supervision, an employer may choose to contact the probation officer for additional information. In such an instance, absent a risk or threat to the public, the probation officer will generally provide only information that is already public record. However, once an employer hires someone who is on probation, the officer will generally work with the employer when appropriate to facilitate the employee's continued employment.

## **How Will an Employer Know Whether a Worker Has a Community Supervision Requirement?**

It is not within a probation officer's course and scope of duty to ensure that employers are aware that an employee is on probation and that the employer takes into consideration court-ordered restrictions when making workplace assignments. If the probation officer, however, determines that there is a "risk to the community" based on the job description and the applicable restrictions, the officer is obligated to notify the employer that the employee is under supervision and notify the employer of the nature of the conviction. With this knowledge, the employer needs to make the appropriate decision regarding that individual's continued or future employment in a particular position.

## **Conclusion**

When making a hiring decision, employers are cautioned not to make particular assumptions about individuals who have criminal records. A candidate for employment with a criminal history may still be highly qualified for the position. For more information on pre-employment background checks and using volunteers with a community service requirement, see the Texas C-BAR website at [www.texasctbar.org](http://www.texasctbar.org).

As an employer, you should always consult with your attorney regarding employment law matters. Additional resources include Texas C-BAR (512-447-7707, ext. 379); the local County Adult Probation Office; and the Texas Department of Criminal Justice, Community Justice Assistance Division (512-305-9300).

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