

Feb. 1, 2012

The Honorable Jacqueline A. Berrien  
Chair, United States Equal Employment Opportunity Commission  
131 M St., NE  
Washington, DC 20507

Dear Chairwoman Berrien:

The undersigned associations represent private and public sector employers, human resource professionals, business and volunteer organizations that have a critical need to protect the safety of people and property in workplaces across the United States. Violence, fraud, and theft in the workplace are serious issues facing employers, their employees, and their customers. We are concerned that the Equal Employment Opportunity Commission plans to revise its long-standing guidance that will make it more difficult for employers and volunteer organizations to review criminal histories of job applicants and volunteers.<sup>1</sup> Several business, victims' rights, and volunteer organizations submitted comments to the EEOC in connection with last year's meeting. However, since the EEOC's current process for revising the guidance does not provide for the prior release of the guidance and meaningful consideration of our possible concerns, we urge you to consider further constructive input from more stakeholders charged with protecting the safety of their workplaces.

We fully support equal employment opportunity and strongly oppose unlawful discrimination. We know that fair and appropriate use of criminal histories is one of the most important tools organizations have to protect themselves and their workers, customers, and assets. The federal government is certainly aware of this fact, having argued strenuously before the U.S. Supreme Court for the right of the federal government to require criminal background checks. A unanimous Supreme Court opinion earlier this year in *NASA v. Nelson* said this: "Like any employer, the Government is entitled to have its projects staffed by reliable, law-abiding persons who will 'efficiently and effectively' discharge their duties." Fair and appropriate risk management is critical for employers, public and private.

Under the federal law and the laws of many states, background checks are required for a variety of private-sector positions and state licenses. Many states have also passed laws or have common-law doctrines holding employers liable for negligent hiring and negligent retention of employees with a history of violent behavior that cause harm to co-workers or the public. More information on this point can be found in Barry Hartstein's testimony from last July's EEOC meeting.<sup>2</sup> The proliferation of these laws demonstrate that policy makers and the public agree that criminal background checks are an effective, important, and practical way to protect

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<sup>1</sup> EEOC Policy Statement on the Issue of Conviction Records under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. (1982). (2/4/87), [www.eeoc.gov/policy/docs/convict1.html](http://www.eeoc.gov/policy/docs/convict1.html).

<sup>2</sup> [www.eeoc.gov/eeoc/meetings/7-26-11/hartstein.cfm](http://www.eeoc.gov/eeoc/meetings/7-26-11/hartstein.cfm).

vulnerable individuals such as children, the elderly and the disabled, as well as the general public who might invite strangers into their homes for repairs and deliveries without knowledge of their criminal history.

The long-standing guidance balances many interests and allows employers to conduct criminal background checks on existing or prospective employees. However, we are worried that the Commission will adopt positions that would cause us great concern, including a possible prohibition on the consideration of any criminal history information more than seven years old. There may be other possible limitations as well that will threaten the ability of employers to appropriately manage risk.

The potential negative effect of this guidance on the ability of employers to protect persons and property in the workplace could be significant. We hope that you will fully evaluate the important public policy issues at stake, as well as all of the practical effects of its actions on all affected parties. In addition, we support a fair and transparent process that allows for constructive input from all stakeholders.

As long as there is workplace violence, fraud, theft, and a need to protect vulnerable populations, there will always be a need to review the criminal histories of applicants for certain positions. We understand the frustration some have in finding employment, especially in a time of national economic stress, and we also appreciate the strong desire to reintegrate ex-offenders into American society. However, attempts to ease unemployment frustration or reentry desires should not come at the expense of keeping people and businesses safe from physical or financial harm, or cutting off employer access to relevant information about their prospective employees.

Sincerely,

Agricultural Retailers Association

American Supply Association

American Apparel & Footwear Association

ASIS International

American Boiler Manufacturers Association

Associated Builders and Contractors

American Camp Association

Assisted Living Federation of America

American Insurance Association

Associated General Contractors of America

American Foundry Society

Automotive Aftermarket Industry  
Association

American Hotel & Lodging Association

Building Owners and Managers Association  
International

American Society of Employers

American Staffing Association

Central Station Alarm Association

College and University Professional Association for Human Resources

Consumer Data Industry Association

Electronic Security Association

Fashion Accessories Shippers Association

Food Marketing Institute

Heating, Air-Conditioning and Refrigeration Distributors International

HR Policy Association

International Association of Amusement Parks and Attractions

International Association of Refrigerated Warehouses

International Public Management Association for Human Resources

National Armored Car Association

National Association of Convenience Stores

National Association of Mutual Insurance Companies

National Association of Professional Background Screeners

National Association of Security Companies

National Association of Wholesaler-Distributors

National Council of Chain Restaurants

National Council of Investigation & Security Services

National Council of Textile Organizations

National Federation of Independent Business

National Grocers Association

National Pest Management Association

National Public Employer Labor Relations Association

National Retail Federation

National Ski Areas Association

National Small Business Association

National Restaurant Association

North American Equipment Dealers Association

North American Transportation Employee Relations Association

Outdoor Amusement Business Association

Property Casualty Insurers Association of America

Society of Independent Gasoline Marketers of America

Retail Industry Leaders Association

Society for Human Resource Management

Security Industry Association

U.S. Chamber of Commerce

cc: The Honorable Constance S. Barker, Commissioner  
The Honorable Chai Feldblum, Commissioner  
The Honorable Stuart J. Ishimaru, Commissioner  
The Honorable Victoria A. Lipnic, Commissioner  
The Honorable John Kline, U.S. House of Representatives  
The Honorable Phil Roe, U.S. House of Representatives