**Employee Arrests – Staying Compliant**

**What should you do if you find out about an employee who has become entangled in our criminal justice system?**

While the answer may never be easy, here are three steps that will help you consistently make a better decision:

**VERIFY.**

How did you hear about the event?  Was it self-disclosed (good) or from a family member, co-worker, social media or the evening news (not so good)?

The real question is whether it is credible information.  You should treat this type of information just like any other complaint and conduct your own little mini-internal investigation.  Often, the best option is to talk to the employee for confirmation. Unless the information is very convincing, it is best to have an admission of the arrest.

Remember that confirmation of criminal records will likely fall within the regulations of the Fair Credit Reporting Act, so running a background check “just to be safe” without a thorough investigation and appropriate authorization would not be appropriate.

**DECIDE.**

With your suspicions confirmed, the next important question to ask is, *does the arrest matter?*  Was your employee entangled in some sort of behavior that would prevent them from performing their duties?

For example, if your production line employee was arrested over the weekend for misdemeanor *Fishing Without a License*, who cares?  It is not an issue, forget about it and move on.  However, if the charge relates to something clearly job-related or that could get in the way of performing job duties (maybe violence or dishonesty) - something that you would normally consider a potential reason not to hire a person in that role - then you need to think through the next steps.

**Caution:** It is important to distinguish between a charge and a conviction.  The Equal Employment Opportunity Commission is clear that you cannot hold a non-conviction against an applicant or employee.  However, you also need to be cautious about leaving your employees, patrons and assets in harm’s way.  If the person has an arrest for a crime that will impact their ability to perform their job functions, you may opt to suspend the employee while the matter is being resolved in court.  In some rare cases, you may uncover information (e.g. the employee tells you, video evidence, etc.) that would allow you to make a decision before the courts have resolved the matter.  In those cases, you would discipline based upon the underlying cause of the arrest.

**ACT.**

If you find yourself dealing with an employee who was arrested for something that is job-related, indecision can compound your liabilities.  Decide if you need to limit the access or duties of an employee and do it quickly.  If the crime is serious enough, suspending the employee may be in order.  Many companies would suspend without pay, with the option to make the employee whole if they are subsequently exonerated.

Deciding if an arrest is really job-related can be tricky, as it is more than an issue of safety or security.  Your employees are a representation of you and not dealing with certain arrest can cause great harm in the eyes of your employees, their families and your patrons.  Furthermore, in certain industries, having staff accused of certain crimes can jeopardize your licensure.  Your issues can also be multiplied if the crime involves employees that are both the perpetrator and victim (e.g. domestic violence, theft, etc.).

**If you find yourself in the sticky spot of having an employee accused of wrongdoing, remember that you can always reach out to Catapults’s Advice team, or to the background/investigation service.**  Catapult’s background checks are fast and economical; but the best feature is that you can call on our staff to help you work through the heartburn that background checks inevitably bring.

Catapult will make it easy for you to comply with the federal Fair Credit Reporting Act.  We also will help you navigate through EEOC compliance, and help you avoid the discriminatory pitfalls that overshadow criminal records.  You can reach Kevin on his direct dial line, 336-899-1150 or at kevin.vonderlippe@letscatapult.org.

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*Kevin W. von der Lippe, a licensed private investigator, has managed our detective agency and licensed background checking business for over 20 years.  He is security minded and proficient with the federal* *Fair Credit Reporting Act (FCRA) and the enforcement of Title VII of the Civil Rights Act of 1964, as administered by the EEOC as it relates to background checks.*

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