

Managing the Hidden Workforce for Untapped Competitiveness

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Crisis of Mass Incarceration

- “The reality that over one in four U.S. adults has a criminal record brings this issue and its public safety and economic consequences to the doorstep of every home in America.”¹
- Unprecedented portion of the American workforce being economically barred from working.

Labor Market Restrictions Limit Opportunity

- **State and local laws have far reaching effects, *i.e.*:**
 - Under NJ law, to obtain any position with an employer holding an alcohol license requires (i) employer sponsorship; (ii) annual renewal; (iii) a seven step application process; and (iv) fees totaling \$200.
 - *i.e.*: Prudential Center Arena in Newark, NJ.
 - Individuals trained through state and federally funded programs may be excluded from obtaining licenses in their professions (such as trucking, barbering, or professional degrees).
 - State contracting laws intended to prevent corruption are applied stringently to all positions at organizations working under state contract.

Criminal Records Disproportionately Impact People of Color

- People of color are overrepresented at every stage in the criminal justice system.
- On the job market, “the white applicant with a criminal record still does just as well, if not better, than his minority counterparts with no criminal background. . . . [T]he stigma of a felony conviction appears to be no greater than that of minority status.”²
- Criminal records confirm and reinforce stereotypes about the lack of competitive virtue among African American men.

Consequences: Cost to Society

- Ex-offenders lower overall employment rates as much as 0.8 to 0.9 percentage points; male employment rates, as much as 1.5 to 1.7 percentage points; . . . [and] cost the country \$57 to \$65 billion per year.³
- “The cost of corrections at each level of government has increased 660 percent from 1982 to 2006, consuming \$68 billion a year....”⁴

Consequences: Unemployment

- “[T]he growth of the U.S. penal system through the 1980s and 1990s conceals a high rate of persistent unemployment and joblessness.”⁵
- “Adjusted figures that count the incarcerated population as unemployed suggest that the U.S. labor market has performed worse, not better, than Europe for most of the period between 1976 and 1994. These effects are especially large for African-Americans.”⁶
- “Once prison inmates are added to the jobless statistics, total joblessness among black men has remained around 40% through recessions and economic recoveries.”⁷

Consequences: Concentrated Unemployment

- The “structure of male nonemployment has shifted significantly over the past 30 years. Jobless men in 2000 were much more concentrated in low-income and moderate-income neighborhoods with substantial numbers of racial and ethnic minorities than they were in 1970.”⁸

Representative Example

- **P.B.:**
 - 60 year old African-American man
 - Father, grandfather, and pillar of community
 - Manager and key talent at large, national company
 - Primarily responsible for managing government contracts
 - Statutorily barred from working with schools because of a criminal record for possessing 5 pills of a prescription drug when he was 17
 - No subsequent issues with the law or drugs
 - NJISJ secured a pardon for P.B. This was the only way for him to return to his job.

Protecting Public Safety?

- Commercially run criminal background checks commonly contain inaccuracies and even FBI background checks are out of date 50% of the time.⁹
- Studies show that after approximately 4-7 years, depending on the crime, criminal records have no value in predicting future risk.¹⁰

What Can Employers Do?

- **Best Practices:** Adopt formal policies incorporating EEOC guidelines and FCRA for assessing a candidate with a criminal record;
- **Intermediaries:** Work with local, low-cost intermediaries to employ quality candidates that have criminal records;
- **Policy Support:** Support legislative reforms that remove barriers to employing qualified individuals with criminal records and expand employee pools

Best Practices

- **EEOC Guidelines:**
 - Employer must take into account:
 - The nature and gravity of the offense or offenses;
 - The time that has passed since the conviction and/or completion of the sentence; and
 - The nature of the job held or sought.
- **Fair Credit Reporting Act (FCRA):**
 - Provide notice and copy of criminal record to applicant
 - Allow applicant to correct errors in record
- **Encourage Applicants:**
 - Include statements in job postings that a criminal record is not an automatic bar
- **Delayed Background Checks:**
 - Push back time of criminal background checks until conditional offer
 - This reduces cost and improves efficiency in the hiring process
- **Expand Credentials:**
 - Accept references from transitional jobs and parole officers
- **Evidence of Rehabilitation:**
 - Allow applicants to present evidence of rehabilitation

Low-Cost Intermediaries

- **NJISJ Programs**

- **New Careers:**

- Prepared and connected individuals recently released from prison to employment opportunities.
 - Assisted with job placement as well as medical care, obtaining legal documents, skills training, and post-placement support

- **Newark/Essex County Construction Careers (N/ECCC):**

- Delivered a 6-10 week curriculum of academic instruction, life skills training and exposure to the construction trades to prepare graduates to pass union entry tests.
 - Employers like ECCC program because it provides an efficient source for quality employees

Policy

- **Legislation:** support legislation to remove state mandated and inefficient employment restrictions on hiring individuals with criminal records
- **Labor Market Study:** proposed study with NJISJ and Professor Rodgers to quantify the harm to local economies from excluding individuals with criminal records from the labor market

Endnotes

- ¹ MICHELLE NATIVIDAD RODRIGUEZ & MAURICE Emsellem, NATIONAL EMPLOYMENT LAW PROJECT, 65 MILLION NEED NOT APPLY: THE CASE FOR REFORMING CRIMINAL BACKGROUND CHECKS FOR EMPLOYMENT (2011). This number includes individuals fingerprinted for serious misdemeanors and felony arrests.
- ² Devah Pager, et. al, *Discrimination in a Low-Wage Labor Market: A Field Experiment*, AMERICAN SOCIOLOGICAL REVIEW, Vol. 74 (2009), at 785-86.
- ³ JOHN SCHMITT & KRIS WARNER, CTR. FOR ECON. & POLICY RESEARCH, EX-OFFENDERS AND THE LABOR MARKET (2010), available at <http://www.cepr.net/documents/publications/ex-ofedners-2010-11.pdf>.
- ⁴ See *supra* note 1.
- ⁵ Bruce Western & Katherine Beckett, *How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution*, AM. JOURNAL OF SOCIOLOGY, Vol. 104, No. 4 (1999) at 1044.
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ Robert L. Wagmiller, Jr., *Male Nonemployment in White, Black, Hispanic, and Multiethnic Urban Neighborhoods, 1970-2000*, URBAN AFFAIRS REVIEW, Vol. 44, No. 1 (2008) at 101.
- ⁹ Shawn Bushway et al., Private Providers of Criminal History Records: Do You Get What You Pay For?, in *Barriers to Reentry: The Labor Market for Released Prisoners in Post-Industrial America*; U.S. Dep't of Justice, Office of the Attorney General, The Attorney General's Report on Criminal History Background Checks 3 (June 2006); available at http://www.justice.gov/olp/ag_bgchecks_report.pdf.
- ¹⁰ Alfred Blumstein & Kiminori Nakamura, "Redemption" in an Era of Widespread Criminal Background Checks, 263 NAT'L INST. JUST. J. 10 (2009); Megan C. Kurlychek, Robert Brame & Shawn D. Bushway, *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 CRIMINOLOGY & PUB. POL'Y 483 (2006).

Questions or Comments

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