

Criminal Background Checks: A Growing Problem for All Union Members, Not Just Those With a Criminal Record

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A growing number of union members, even those without criminal records, could lose their jobs, receive a cut in pay, or suffer other serious problems that result from new background checks laws and the faulty record systems operated by Choicepoint and other screening firms.

While everyone agrees it's necessary in this new day and age to screen for certain criminal records in some jobs -- like screening nursing home workers for crimes involving the elderly -- the laws must also balance the rights of workers and take into account the major shortcomings of the criminal history information system. As union industries like health care, schools, trucking, transportation, and construction are increasingly targeted for criminal background checks, it's more important now than ever for union members to be educated consumers and extra vigilant about their rights.

The New Age of Criminal Background Checks

Many more industries and occupations are being put under broad criminal record checks, including new laws that don't just screen for criminal records but also prohibit employment of current employees who have certain records, often including isolated incidents dating back to when they were young and restless. Meanwhile, millions more Americans now also have a criminal record. In fact, one in five adults in the United States has a misdemeanor or felony record that will show up on a routine criminal background check.

State and federal laws regulate hundreds of jobs, and their number has been increasing especially since September 11th. For example, nearly three million truck drivers who have a license haul hazardous material now have to be screened for the first time by the Transportation Security

Administration for "terrorism risks" as a result of the Patriot Act. They will lose their hazmat license, and thus their jobs in most cases, if they have a felony record going back seven years, including non-violent drug convictions which have nothing to do with terrorism.

In addition to these new legal mandates, there's also the growing industry of companies, like Choicepoint, that are amassing huge databases and offering the criminal history information to private and government employers at cheap rates and in record time. In 2004, 80% of human resources professionals said they conduct criminal background

checks, up from 51% in 1996. The problem is that there are hardly any legal limits on when employers can run background checks and what information the background check companies can report to these employers. So, even if your industry has a rule that says employers cannot consider older records or can just consider convictions (not arrests), the background check that the employer receives still shows most any contact the individual had with the criminal justice system, no matter how old, no matter how the case turned out, no matter how relevant to the job.

"If I Don't Have a Criminal Record, Why Should I be Concerned About Background Checks?"

Because the practice has become so widespread, even union members with no criminal record can end up with serious problems caused by criminal background checks.

For starters, the government and the commercial firms like Choicepoint routinely generate errors and inaccuracies of all kinds and security breaches that unfairly penalize union workers. For example, employers often receive a criminal history report on an employee who, it turns out, was mixed up with someone else with the same or a similar name. That means union members with common names like Smith, Lopez, Williams,

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Jones, or Wong, should be on the look out for a background check that inaccurately reports a criminal record. In fact, a 1997 study found that one in twenty “named-based” background checks – the same type done by Choicepoint and most states – produces a criminal record for those who don’t have one. Each year, that adds up to an estimated 300,000 innocent workers who have to deal with the results of a “false positive” because of a background check.

In addition, the information collected is often stale, which means it’s also inaccurate. For example, a union member may be arrested years ago after a bar fight, and then all charges are dropped. But because the system is never updated to show that the charges were dropped, then the information is inaccurate. In half the states, 40% of arrest records have not been updated in at least five years to show if the case has been dismissed. In addition, a study in New York found that 87% of rap sheets had at least one error and more than 40 percent contained two errors. Most people believe they don’t have a record when the charges have been dropped, but they do because the information has never been cleaned up, plus the employers still sees the arrest even if the rap sheet was properly updated.

Even worse, just like the rampant increase in “identity theft” involving credit cards and Social Security numbers, “criminal identify theft” is also on the rise because the criminal information is so readily available. Take the case of Jermaine Flood, a 31-year old resident of Philadelphia, who had never been arrested - but that’s not what his record says. Mr. Flood’s identify was stolen, and it was used by someone else who was arrested for a number of crimes. With help from a legal aid lawyer, Jermaine proved through fingerprinting that he has no criminal record. But the Pennsylvania State Police Department refused to purge his records and most private corporations’ records still show the errors despite his best efforts to clear his name. Employers shy away from Jermaine, and although he is trained as a practical nurse and lab technician, he now can’t find anything but a low-paying, non-union job. “I’m so far behind on my dreams,” Jermaine said, “While they are sitting around talking about all these loopholes, I’m out here starving.”

Finally, the extra costs of background checks are being unfairly passed on to workers, especially as more background checks involve expensive fingerprinting which is required to access the FBI

records for all the states. In fact, there’s a major movement now – one that may expand even more if some in Congress have their way – to require that background checks tap into the FBI’s database, not just the records of the individual state where the worker lives or works. As a result, for the first time in 2002, fingerprint requests for FBI records for non-criminal justice purposes exceeded those conducted to track down crimes. In 2004, there were over 5 million fingerprint-based background checks done by the FBI just for employment screening purposes.

What’s the problem with an FBI check? Well, in addition to the privacy concerns as fingerprint information is available on millions more Americans, the FBI checks cost money and they can be very time consuming. The prints have to be collected by the police or by specially designated agencies, which may not be all that convenient to get to especially in more rural parts of the country. So, like applying for a driver’s license, most of the day can be taken up just getting the prints taken and having them processed. Plus, in many cases (over 500,000 last year), the prints have to be taken again after they are rejected by the FBI because of problems with their quality. The costs run about \$75 (\$25 for the FBI search, \$35 for the fingerprinting process, and \$18 to get a copy of the FBI record), which adds up to a full day’s pay for many union members, like private security guards now earning about \$11 an hour. Plus, more employers, like school districts, are requiring the process to take place regularly, every few years in some cases, so the fees are not just a one-time expense.

Background Checks – The New Weapon of Choice to Retaliate Against Union Organizing

Give the ready access to criminal history information, background checks are also becoming a weapon of choice for employers to undermine union organizing.

Take the case of Russell Teegardin, who worked as a maintenance mechanic at the Consolidated Biscuit Company in McComb, Ohio. He and other workers contacted the Bakery, Confectionery, Tobacco Workers and Grain Millers Union, and began an organizing drive. Within weeks, the boss conducted a criminal background check on Russell and it came back clean. As the drive picked up steam, the boss ran a second check. This time, it revealed that Russell had a 15-year old DUI conviction, for which he served 3 days in jail and paid a \$350

fine. Just to be sure, the boss ran a third check, which came up with nothing else. Naturally, the boss fired Russell, a union activist. Fortunately, the NLRB found that the firing was illegal and ordered him reinstated to his job, with back pay – but not until two years later.

Anti-union employers, like Wal-Mart, have also taken advantage of background checks to gather information on innocent workers. Not long ago, Wal-Mart ran state background checks on all 1,000 workers at a distribution facility in California, claiming that all the workers had access to certain cold medicines that were stored in isolation at the plant. When the California Attorney General was asked about the search, which was based on the state's law regulating those with access to cold medicines, the Attorney General's office agreed that Wal-Mart went too far – that only a handful of workers needed to be checked under the state law, not the whole facility.

Three Tips for Protecting Your Rights

#1: Be an educated consumer – get a copy of your criminal record and know what your employer knows.

Just like your credit report, it's important to get a hold of your criminal record to be sure it's accurate, complete, and that no one has stolen your identify. It's easy enough in most states, and usually involves just a minor fee, if any. A non-profit group called the HIRE Network maintains a state-by-state list of criminal record repositories at www.hirenetwork.org/resource.html. Click on your state and scroll down to Section II. To request what is in your FBI record, follow the instructions at www.hirenetwork.org/fbi_rapsheets.html.

#2: Correct any mistakes or old information right away, don't wait.

If you find any mistakes, or information that has not been updated (like an arrest that is not reported as dismissed), contact the state that maintains the record. You can find that agency by following the HIRE Network's resource link listed above.

#3: Get involved educating and proactively advocating to protect union members when criminal background checks go too far.

Many unions are leaders in the fight to protect against increasingly intrusive and unfair criminal background checks. Don't wait until your union has to fend off new background checks requirements to get involved. For research on how new background checks requirements are playing out in your industry and model strategies to limit the abuses associated with background checks, contact our Second Chance Labor Project. Check out our website at www.nelp.org/secondchance, or contact us directly at secondchance@nelp.org or 510-663-5700.

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