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# EEOC Taking Flak on Criminal Background Check Agenda

Last week, attorneys general of nine states signed [a five page letter](#) addressed to the Equal Employment Opportunity Commission. The letter sharply criticizes the EEOCs [guidance](#) related to employers use of criminal background checks, and calls the EEOCs position misguided and a gross federal overreach. It accuses the EEOC of attempting to expand Title VII's protected classes to persons with conviction records.

The letter was sent from West Virginias attorney general and signed by the attorneys general of Montana, Alabama, Nebraska, Colorado, South Carolina, Georgia, Utah and Kansas. It was precipitated by the lawsuits referred to in our [June 19 post](#).

In the suit against BMW, the EEOC alleges that background checks done on current employees of a contractor disproportionately screened out black workers at a South Carolina facility. Many of the employees who lost their jobs had worked at the BMW facility for several years. The Dollar General case involves two black applicants. One of the applicants had a conditional job offer rescinded after a six year old drug conviction was discovered. The other applicant was rejected after an erroneous conviction was reported.

The BMW and Dollar General lawsuits emphasize the need for employers to avoid the temptation of adopting general policies dictating how to address applicants and employees with criminal histories. Rather than automatically consider ex-offenders as unsuitable for employment, employers need to perform an individualized assessment that considers the nature and gravity of the offense or conduct, the time that has passed since the offense occurred or a sentence was served, and the nature of the job. Despite the outcries from these state officials and many employers, it is unlikely that the EEOC will retreat from its position that blanket no-felon policies are unlawfully discriminatory.