

Do Employees Have to Disclose Their Youth Criminal Background Records?



Requiring employees for youth criminal records may be okay if convictions are related to job duties.

SITUATION

Theft is a constant concern at a clothing store where unsupervised employees have access to cash and merchandise. So, the store requires that all employees to be bondable and insurable and not have a history of fraudulent or dishonest acts. Its job application asks prospects if they've ever been convicted of theft or other offences related to the job. And all job offers are conditioned on the prospect's providing the store with security-related information, including their adult and young offender criminal records, which prospects must obtain from the police. A young prospect applies for a job as a sales clerk and the store gives him an offer. He accepts the offer and starts work but then refuses to provide his adult and young offender criminal records.

QUESTION

Can the store fire the clerk for refusing to provide his criminal background records?

- A. No, because firing him for not providing his criminal background records is discrimination
- B. No, because while the store can ask for his adult criminal record, it can't ask for his young offender criminal record
- C. Yes, because it has a legitimate interest in accessing his criminal background records to evaluate his bondability, insurability and trustworthiness
- D. Yes, because refusing to comply with the terms of the job offer is always grounds for termination

ANSWER

- C. The store may ask for the criminal background records to assess the clerk's bondability, insurability and trustworthiness and fire him for refusing to provide

them.

EXPLANATION

This scenario, which is based on an Alberta labour dispute, illustrates how far employers can go in requiring new hires to disclose information about their criminal backgrounds, especially their juvenile records. The store's concern with theft and verifying employee trustworthiness. In addition, the job application and job offer sheet, both of which the clerk signed, made disclosure of those records a condition of employment. However, there's also a federal law called the Youth Criminal Justice Act that protects the privacy of young offenders and bans employers from accessing their criminal records without a court order. The union contended that the store's demands were a circumvention of the Act and filed a wrongful dismissal grievance.

The Alberta arbitrator dismissed the grievance. The store could fire or refuse to hire individuals if they were convicted of crimes reasonably connected to the job, such as shoplifting or theft. This is true regardless of whether the person was convicted as a juvenile or adult. So, the arbitrator reasoned, even though the store couldn't ask the police directly for the clerk's young offender record, it could ask the clerk himself for both his adult and young offender criminal records. It could then use those records to determine if he had any criminal convictions that would make him unbondable or uninsurable. Otherwise, young prospects could simply lie about their criminal record on the job application and the store would have no way to verify the information. Bottom Line: The store had just cause to fire the clerk for refusing to provide his criminal records as required by the terms of his job offer [Union of Calgary Co-Operatives Employees v. Calgary Co-Operative Association Ltd., [2006] Grievance Arbitration Award, Arb. Beattie].

WHY WRONG ANSWERS ARE WRONG

A is wrong because it's not discrimination to fire or refuse to hire an individual based on his/her criminal record if the individual has convictions for crimes related to the job. For example, a daycare center could refuse to hire a prospect who was convicted of child abuse. But a retail store would probably be liable for discrimination if it fired a sales clerk who was convicted of an unrelated offence, such as DUI (assuming, of course, that driving isn't part of the job).

B is wrong because although it's illegal for the police to give the store the prospect's young offender criminal record directly, it's not illegal for the store to request that information from the prospect himself. The Young Offenders Act limits direct access by employers to the criminal records of individuals who were between ages 12 and 18 when they were convicted. But it doesn't bar people from disclosing their own young offender records themselves.

D is wrong but almost right. Failure to comply with the terms of a job offer is usually grounds for termination. But not always. **The key factor:** The job offer terms must be legal. Employees may refuse to comply with directives that are illegal. Such refusal isn't insubordination and thus can't be grounds for discipline or termination. Here, it was legal for the store to require the clerk to disclose his adult and young offender criminal records as part of the job offer. And because the clerk didn't comply with this legal request, the store had just cause to fire him.