

## EMPLOYER TO EMPLOYER

### Georgia's Business Leaders Support Second Chances for Rehabilitated Individuals January 7, 2019

On January 7<sup>th</sup>, Georgia Justice Project (GJP) hosted an "Employer to Employer" panel discussion at Nelson Mullins on hiring candidates with a criminal record in the current tight labor market.

**Antonio Robinson, Vice President and Associate General Counsel at Carter's**, was tapped to give the keynote address by **Teresa Roseborough, Vice President and General Counsel at Home Depot** and former member of the Council on Criminal Justice Reform. Mr. Robinson, a former employment attorney at Littler Mendelson, encouraged businesses to employ best hiring practices by eliminating questions about criminal records on job applications and in interviews to ensure that qualified candidates are not excluded at the outset of the hiring process.

Panelists included senior leadership from **Delta Air Lines, Inc., Enterprise Holdings, CKS Packaging and Mud Pie**, who shared their path to second chance hiring and highlighted the need for policy change to reduce barriers to hiring individuals with a record. Employers were able to gather insights on benefits, challenges, and best practices from those who regularly hire individuals with a record.



"Look at these individuals on a case-by-case basis. In many instances there is a story. Once you find out the story, you are in a position to make a more informed decision on whether to hire that individual."

Antonio Robinson, Vice President and Associate General Counsel at Carter's

Second chance hiring has grown increasingly relevant as employers encounter a shortage of qualified job candidates in a state where 40% of the adult population has a criminal record and the related laws are among the most prohibitive in the nation. **Alex Ruder, Senior Advisor in the Community and Economic Development group at the Federal Reserve Bank of Atlanta**, presented data showing that 70% of businesses in Georgia reported hiring difficulties and 23% were due to difficulty passing the criminal background check and/or drug tests.

In the 2019 legislative session, GJP's top policy objective is the expansion of restriction and sealing to certain convictions, as recommended in the 2018 Report of the Council on Criminal Justice Reform. Research demonstrates that reducing barriers to hiring individuals with a record increases public safety, strengthens the economy, and benefits the employer's bottom line. Employers at GJP's employer events have articulated broad support for the restriction and sealing of certain convictions after a certain amount of time, citing their calculation that this policy change would make it easier to find qualified talent.

\*Participation in the Employer to Employer event should not be interpreted as an indicator of a company's internal policies. All views expressed by attendees were their own.

#### ATTENDEES

Carter's, CKS Packaging, Coca-Cola Company, Comcast, Consolidated Container Company, Emory, Enterprise Holdings, Federal Reserve Bank of Atlanta, Future Forwarding Company, Georgia Department of Transportation, Georgia Tech, Gordon Food Service, Medline, Mud Pie, Platinum Cargo, and Russell Landscape Group

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## EMPLOYMENT LAWYERS SECOND CHANCE DISCUSSIONS

### November 2018 – January 2019

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*Private sector engagement is a key part of GJP's policy strategy. In the lead up to the 2019 session, we are hosting a series of events for employers with the aim of learning more about the employment obstacles facing the formerly incarcerated and seeking guidance and suggestions on policy solutions that reduce these barriers. From November 2018 to January 2019, Georgia Justice Project hosted lunch discussions with employment lawyers at Atlanta's leading law firms, including Seyfarth Shaw, Alston & Bird, Olgletree Deakins, and Jackson Lewis.*

#### **Landscape:**

- Nation and international employers like to have a company-wide policy. This is problematic in states with stricter laws, such as Georgia.
- Larger companies that operate in multiple states are more likely to have policies to Ban-the-Box to ensure compliance with various laws and implement an individualized assessment as an employer.
- Employment lawyers advise employers to at least “go through the motions” to avoid discrimination claims.
- Pending cases and convictions are primarily considered.

#### **Risk & Liabilities:**

- Few employment lawyers we have spoken with have encountered EEOC disparate impact claims. These cases are less common.
- For employers, the risk of a negligent hiring lawsuit outweighs the risk of an EEOC disparate impact claim.
  - Negligent hiring cases are fact driven and are rarely resolved in summary judgement.
  - As it stands, once an employer knows about a conviction, even if a motion has been granted to restrict and seal, they are liable for any incidents related to the conviction.
  - Damages in negligent hiring suits are uncapped.
- The PR damage in a negligent hiring suit gives it even more weight.
- The employment lawyers we have spoken with have not experienced a significant issue with Insurance policies and criminal records.

#### **Proposed Changes:**

- In order for the restriction and sealing of convictions to be effective:
  - The individuals granted the motion to restrict and seal needs to be able to state that they have *not* been convicted of the given charge.
  - Employers will need to be granted immunity in negligent hiring suit related to the conviction
- The rebuttable presumption in the Certificates of Completion and Certificates of Program and Treatment Completion statute does not provide the protection employers need
  - The issuing of certificates to ALL returning citizens reduces their value
  - See the Alston and Bird white paper on certificates [here](#).
- A public education campaign is needed to remove the stigma hiring individuals with a criminal record (retention, desistence, etc.).