



AG STRANGE JOINS EIGHT OTHER STATES IN LETTER TO EEOC SUPPORTING EMPLOYERS' RIGHT TO USE CRIMINAL BACKGROUND CHECKS IN HIRING DECISIONS

(MONTGOMERY)--Alabama Attorney General Luther Strange announced today that he has joined with Attorneys General in eight other states in a letter to the U.S. Equal Opportunity Commission to express concern over two recent lawsuits filed by the commission that claim the employers' use of criminal background checks of potential employees constitutes unlawful employment discrimination under federal law.

The letter says the lawsuits, filed against Dollar General and BMW Manufacturing Co. LLC, are "misguided and a quintessential example of gross federal overreach." The Attorneys General urge Commission Chair Jacqueline Berrien and the other four Commissioners to reconsider the lawsuits and the published agency guidance driving the lawsuits, which assert that the use of generally applicable criminal background checks as a bright-line screening tool in the hiring process will often violate Title VII of the Civil Rights Act of 1964.

"Only an out-of-touch federal bureaucrat could think these lawsuits are a good idea. Convicted felons are not a special class protected by the employment laws, and potential employers have self-evident reasons to prefer law-abiding citizens over murderers and rapists," Attorney General Strange said. "This is also the worst possible time for the EEOC to try to force businesses to hire convicted felons. The Obama Administration has spent four years imposing burdensome federal regulations on Alabama businesses, and law-abiding citizens still face a high unemployment rate."

Title VII prohibits intentional discrimination (known as "disparate treatment") as well as, in some cases, practices that are not intended to discriminate but have a disproportionately adverse effect on minorities (known as "disparate impact"). In published agency guidance and in the lawsuits, the EEOC argues that using criminal background checks as a bright-line screening tool in the hiring process will in many cases violate the disparate impact prohibition. The agency claims that criminal background checks have an adverse effect on African-American applicants because African Americans have higher conviction rates, and are not often job-related or consistent with business necessity.

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The Attorneys General disagree that race discrimination is the EEOC's actual concern and believe the agency seeks to expand Title VII protection to former criminals – something Congress has never approved.

“It defies common sense to suggest that a bright-line criminal conviction screen will only rarely be ‘job-related’ and ‘consistent with business necessity.’ An employer may have any number of business-driven reasons for not wanting to hire individuals who have been convicted of rape, assault, child abuse, weapons violations, or murder – all crimes specifically mentioned in the complaints,” the attorneys general wrote. “No matter how unfair a bright-line criminal background check might seem to some, it is not your agency’s role to expand the protections of Title VII under the pretext of preventing racial discrimination.”

West Virginia Attorney General Patrick Morrisey sponsored the letter. In addition to Alabama, other states to sign on to the letter were Colorado, Georgia, Kansas, Montana, Nebraska, South Carolina and Utah.