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***Your Employment Law Bulletin from***

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**KRUCHKO &  
FRIES**

**January 17, 2012**

**Pepsi to Pay \$3.13 Million for Faulty Arrest Record Policy**

Apparently, the people at Pepsi don't read the Employment Law Bulletin. On October 31, 2011, we cautioned employers that a criminal background check policy that allows "automatic exclusions from employment based on frequent or recent arrests may disproportionately exclude African-Americans and Hispanics [and violate Title VII]." Last week, the EEOC announced that Pepsi had agreed to pay \$3.13 million to resolve a charge of race discrimination based on a criminal background check policy that disproportionately excluded black applicants from employment.

Under Pepsi's policy, job applicants who had been arrested pending prosecution were not hired for a permanent job even if they had never been convicted of any offense. Pepsi also denied employment to applicants for employment who had been arrested or convicted of certain minor offenses.

In addition to the monetary relief, Pepsi will offer employment opportunities to victims of the former criminal background check policy who still want jobs at Pepsi and are qualified for available positions. The company will supply the EEOC with reports on its hiring practices under its revised background check policy. Pepsi will also conduct Title VII training for its hiring personnel and all of its managers.

The use of arrest records as a bar to employment will always be viewed with suspicion by the EEOC. The agency recommends that employers carefully evaluate whether an arrest record accurately reflects the applicant's conduct. An employer should give the applicant a reasonable opportunity to dispute the validity of an arrest record to ensure that it is using accurate information to make its hiring decision.

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