

## Illinois Labor Shortage: Practical Suggestions for Employers

The top issue for many Illinois employers is the state's labor shortage. According to [Moody's Analytics](#), Illinois faces a real demographic challenge: lower unemployment, an aging population, out migration to faster growing states, and lower immigration which all translate to fewer qualified applicants for employers. To fill the gap, some Illinois employers are taking a [second look](#) at convicted criminals.

Not long ago, employers were so reluctant to hire workers with criminal backgrounds that the EEOC published [guidance](#) on the issue. That guidance is moot. When employers call CCM now, they want to have an individualized discussion about candidates with criminal records. Ironically, this is exactly what the EEOC instructed employers to do back in 2012.

1. **Drug Crimes:** The most common conviction revealed on background checks are drug crimes. The first data point that CCM discusses with employers is when the drug crime was committed. If the applicant was convicted in young adulthood, that is more forgivable than a conviction as an adult.

Next, we inquire as to the type of drug crime: possession or trafficking. The use and possession of drugs is arguably less serious and less of a problem for employers than trafficking. Similarly, a marijuana conviction is less serious than a narcotics conviction. Third and finally, we talk at length about the nature of the position that the employer is hiring for. Someone driving a forklift cannot be addicted to opioids. Employers can afford to take more chances with a file clerk.

Other points we make in our discussions with employers are:

- More than one DWI (driving while impaired/intoxicated) is a sign of a serious substance abuse problem.
- Drug testing: there is nothing wrong with subjecting employees to randomized drug testing assuming a policy is in place. If an employer does not have a policy, CCM can draft one.
- Do not get caught up on distinctions between misdemeanor convictions and felony convictions. There is little uniformity with how drug crimes are charged, prosecuted, or plea bargained.

2. **Violent Crimes:** More people are [incarcerated](#) for violent and property crimes than for drug offenses alone.

The most salient fact when evaluating an applicant convicted of a violent crime is when the crime occurred. If there is a decent interval between when the crime was committed and the present, with no intervening convictions, employers may consider the candidate for hiring. The recidivism rates for homicide, for example, are lower than any other crime.

Violent crime against women: rape, sexual assault, domestic battery is difficult to integrate into certain workplaces. Many employers tell us that their work force is at least 50% female and they do not feel comfortable hiring these kinds of applicants. This is understandable. On the other hand, these applicants have the second lowest recidivism rate behind individuals convicted of homicide.

3. **Crimes of Dishonesty/Crimes Against Property:** The recidivism rate for crimes against property: burglary, larceny, motor vehicle theft, fraud/forgery is 82.1% over a period of 5 years. These applicants need to be rigorously vetted and should not be given access to an employer's financial infrastructure unless they have proved themselves over time.

4. **Talking to An Applicant About Their Background:** Once an applicant is deemed as qualified for the position, an employer should interview the applicant. We suggest using open-ended questions:

- Tell me about your criminal conviction?
- Have you changed since your criminal conviction?
- Who did you hurt in connection with your conviction?
- How have you tried to make amends for your conviction?

These four questions should reveal a great deal about the conviction in the past, and the applicant in the present.

### **Don't Forget the Tax Credit for Hiring Felons**

The [Work Opportunity Tax Credit](#) (WOTC) is a federal tax credit available to employers who hire and retain ex-felons, among others. Employers claim about \$1 billion in tax credits each year under the WOTC program. There is no limit on the number of individuals an employer can hire to qualify to claim the tax credit. The credit is available to employers who hire ex-felons, based on the individual's hours worked and wages earned in the first year.

- If the individual works at least 120 hours, the employer may claim a tax credit equal to 25% of the individual's first year wages, up to the maximum tax credit.
- If the individual works at least 400 hours, the employer may claim a tax credit equal to 40% of the individual's first year wages, up to the maximum tax credit.

## Conclusion

Hiring individuals with criminal backgrounds is not a solution for every employer. For some employers, however, it can mitigate the present labor shortage.

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Ross I. Molho  
Clingen Callow & McLean, LLC  
2300 Cabot Drive, Suite 500  
Lisle, Illinois 60532  
[www.ccmlawyer.com](http://www.ccmlawyer.com)  
(630) 871-2614

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