

# A new employee's criminal history could raise questions from the public. Here's how to respond.

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## FULL TEXT

*Reader: I am starting a small business and plan to hire my brother, who is an ex-convict, for a management position. He is a good candidate for the position, and his crime has nothing to do with the type of work we will be doing. I am aware of all of the issues that can arise with working with family, and I am confident that we can navigate those pitfalls, so the question is not about that.*

*My concern is that his crime is one that is particularly radioactive and researchable. We live in a very small town, and I am positive that the situation will come to light rapidly. Any advice on how to address this when it inevitably breaks open?*

*Karla: As I'm sure you know, working with family means establishing firm boundaries between your personal relationship and your business relationship.*

*So: Are you asking how to address your brother's criminal record as his employer, or as his sister?*

*As his sister, you probably want to defend and advocate for his humanity; to explain that you know who he is and that you trust in his character and rehabilitation; to point out that he has served his time and deserves a fresh start.*

*But how should you respond as his employer?*

*According to employers I contacted, the answer is simple: You shouldn't.*

*Judy Adams, vice president of People & Culture for Goodwill of Greater Washington, says Goodwill's policy is that "we do not discuss a Team Member's [employee's] criminal record with any member of the public."*

*Another area employer responds in a similar way.*

*"I would not talk to somebody about [an employee's] criminal background," says Monique Lilly-Moore, president of DC metro-area luxury affordable housing company Faria Management.*

*Second chances and public redemption from encounters with the justice system are frequently available to those who can afford skilled legal defense and public relations advocates. But for most returning citizens (the preferred term for formerly incarcerated people in justice reform circles), the stigma of jail time is often an obstacle to gainful employment, regardless of the nature or degree of the offense.*

*Even when you have served your time, says Lilly-Moore, "these records follow you," including for offenses that may no longer qualify as crimes, such as marijuana possession, or minor infractions subject to outdated mandatory sentencing guidelines. Being honest about past arrests or convictions on a job application can knock a candidate out of consideration. And withholding that information at the start of the process can mean losing the job if the applicant's history pops up in a background check.*

*In recognition of this double bind, many state and local jurisdictions have adopted "ban the box" laws that prohibit asking candidates at the start of a hiring process about past arrests, charges or incarceration history. Background investigations are delayed until candidates have had a chance to demonstrate their qualifications, but employers can still be fully informed of their employees' background before they make a final decision.*

For every candidate who is being seriously considered for hire, Lilly-Moore conducts a standard criminal background check and investigates the findings. She speaks with the candidate and considers the circumstances surrounding the offense and its relevance to the position. Once she is confident the business, other employees, clients or even the candidate will not be put into a risky situation, she makes her final hiring decision. "Some of the best people I have ever had in my employ have been formerly incarcerated individuals," she notes.

Goodwill performs the same process, according to Adams. "If an offense is related to the job for which the candidate is applying in such a way that we do not feel comfortable putting the person in that position, we will not place them into that position. However, we may consider them for other positions."

Reader, I'm not going to ask about the nature of your brother's offense because I want to avoid judging whether you're doing the right thing by hiring him. But I would urge you to think hard —maybe even consult a lawyer for a clear-eyed opinion —about whether you are applying the same objective caution to your hiring decision as the employers above do. If so, it should be as simple and straightforward for you as it is for them to decline to engage with outsiders on the matter.

But if you have legitimate concerns about how his past actions or public perception of them will affect your business, then as an employer, you are within your rights to decide that being professionally connected to him is not a risk you can afford to take. In that case, you may have to find other ways to support his reentry as his sister, not his employer.

*Pro tip:* Local government labor agencies often offer programs to assist returning citizens with the transition to gainful employment, including skills training and coaching. Lilly-Moore and Adams have connected with job candidates through the DC Office of Employment Services Project Empowerment Program and Georgetown University's Pivot program.

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