

Mugshots Gone Viral: Internet Clickbait Is A Hiring Manager's Minefield

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While “that hot mugshot guy” launched a modeling career – including a recent New York Fashion Week runway appearance – based on his improbably good-looking [booking photo](#), most arrestees are not so lucky. It seems the Internet-browsing public can’t resist clicking around for such photos -- from celebrities to the average joe -- and thus media sites routinely post such photos to attract page views. Mugshots are nearly unavoidable on the Internet and they remain posted long after any news value has faded away. There are even commercial websites devoted to posting such photos, inducing people into paying take-down fees to remove them, according to a [recent news report](#) about a lawsuit that is challenging the legality of such arrangements. Featured prominently in this news article is an individual who recounts how he believes he has lost employment opportunities because his booking photo continues to turn up in Internet searches. Setting aside the First Amendment issues involved in collecting and posting such photos, there are some real concerns for employers who use Internet searches as part of their routine recruitment and employee on-boarding processes. So if your HR staff is tempted to use Google when researching applicants for employment, keep in mind the following:

1. Arrests are not convictions. Making an adverse judgment on the mere fact of a booking photo or other evidence of an arrest, without more, risks a potential claim for employment discrimination. In Illinois, for example, the [Human Rights Act contains a specific prohibition](#) on using the fact of an arrest as the basis for hiring, termination, or other employment decisions.
2. Criminal convictions do not automatically disqualify an applicant for employment. The recent adoption in a number of states of so-called “ban the box” laws to limit or bar the use of questions about criminal history on job applications is just one indication of attempts to balance legitimate hiring and qualification issues with the public policy favoring rehabilitation of individuals with criminal convictions. The U.S. Equal Employment Opportunity Commission (EEOC) also is keenly focused on the potential disparate impact in the use of criminal background information, with an emphasis on ensuring that screening is job related and consistent with business necessity. The EEOC’s views on the subject can be explored more fully [here](#) and [here](#).
3. Criminal record information on the Internet may contain inaccuracies. That’s right, not everything you find on the Internet is true. In particular, individuals may go to great lengths to have criminal history information expunged from official records, yet independent sites may not correct or update their data.

Beyond compliance with federal non-discrimination laws, employers also must keep up to date on the ever-changing requirements of each specific

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state in which they recruit and hire. Simply put, snap judgments made on snapshots can be fraught with peril – so be careful where you click.