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The Role of Businesses in Reducing Recidivism in Ex-Offenders

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During the 2018 State of the Union address, President Trump addressed the need to give former prisoners a “second chance,”^[2] a shortcoming that should spur bipartisan efforts to reform our criminal justice system to better prepare people for successful reintegration into society. Despite the President’s tough-on-crime agenda, he stated “[T]his year we will embark on reforming our prisons, to help former inmates who have served their time get a second chance at life.”^[3] One of the most obvious goals of incarceration is to produce law-abiding and rehabilitated citizens. However, 75% of released prisoners are arrested again after five years.^[4] Recidivism refers to the “re-arrest, the re-conviction, or the re-incarceration of ex-offenders.”^[5] Studies have shown that unemployment is the largest contributing factor in the high rate of recidivism, as unemployed offenders are more than twice as likely to recidivate than those employed.^[6]

There are many ways states have attempted to fix this problem such as implementing occupational licensing limitations or “Ban the Box” legislation.^[7] Some states allow licensing authorities to consider applicants’ convictions, but does not allow a criminal history to be an automatic disqualification.^[8] Other states require there to be a relationship between the applicant’s conviction and the occupation before a board is allowed to deny the application based on a conviction.^[9] The “Ban the Box” movement seeks to remove criminal background questions from job applications.^[10] Additionally, it mandates delaying background check inquiries until further into the hiring process so ex-offenders will have an opportunity to interview and explain why they are qualified for employment.^[11] This response focuses on the role private business have in providing opportunities to ex-offenders in furtherance of the ultimate goal: reducing recidivism and enhancing public safety.

Current tort law presents an impediment to this goal, making it more challenging for businesses to hire ex-offenders. Employers have a duty to their business and customers to exercise good judgment and ensure a safe workplace.^[12] However, “[i]s it a prerequisite [for an employee] to have a felony history [before he or she will] hurt somebody at work? The answer is no[.]”^[13] To begin this process, we need to adopt a new approach to criminal records in the hiring process. This new approach should reject the notion that a criminal record is a disqualifying credential for otherwise qualified candidates.

Traditionally, businesses have been remiss to hire candidates who have criminal convictions.^[14] However, as the percentage of the workforce with a criminal conviction increases, this policy becomes increasingly archaic.^[15] Moreover, qualified candidates are joining the ranks of the structurally unemployed.^[16] Therefore, some businesses might face a competitive disadvantage if they do not hire qualified ex-felons, who have the needed skills to fill the vacant jobs.^[17] When businesses refuse to hire



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ex-offenders, not only does it damage them, it negatively impacts the broader economy. Research conducted shows a loss of 1.7 to 1.9 million workers in 2014 due to employment barriers faced by ex-felons.^[18] This loss resulted in an estimated loss of \$78 to \$87 billion in GDP.^[19]

If businesses are incentivized to hire candidates who are otherwise qualified despite their criminal conviction, traditional job hiring practices can be changed. Employers may see ex-offenders as a potential cause of negligent hiring liability.^[20] The fear of general liability discourages employers from hiring or even considering ex-felon applicants.^[21] This concern can be adequately addressed by promulgating legislation that grants employers limited immunity from negligent hiring claims.^[22]

The lack of work experience and relevant skills presents another barrier to former inmates. Companies and correctional agencies that partner to form programs which give inmates access to work while imprisoned allow inmates to “acquire the skills they need to secure gainful employment upon release and avoid recidivism.”^[23] Prisoners gain work experience, and earn a salary to support themselves and their families.^[24] Businesses also benefit as they gain access to an untapped, yet qualified labor pool. Research on these programs demonstrates that participants are more likely to find employment after release.^[25]

If businesses are more willing to hire ex-felons, a chain reaction of positive effects will take place. More inmates will successfully re-enter the labor force, leading to an overall decrease in the unemployment rate. In effect, GDP will increase because more individuals will be in the workforce. In addition, each ex-offender who finds employment and stays out of prison will reduce incarceration and judicial costs, reducing a burden on taxpayers. A change in traditional hiring practices will lead to lower rates of recidivism, meaning fewer prisoners in the United States. Given the United States has one of the highest rates of incarceration in the world, this overarching problem deserves our focus.^[26]

Businesses have a critical role to play in providing opportunity to individuals who need a second chance. Not only can they change the lives of these individuals, they can change the broader economy. Reformation and incentives are needed in order for businesses to take the lead in this movement. As more businesses get involved in providing opportunities to ex-offenders, the traditional hiring practices can evolve, and in return, reduce recidivism rates, giving ex-offenders a second chance.

^[1] J.D. Expected May 2019.

^[2] Jared Meyer, *Trump Wants to Give Ex-Cons a Fresh Start*, WASH. EXAMINER (Mar. 24, 2018), <https://www.washingtonexaminer.com/trump-wants-to-give-ex-cons-a-fresh-start>

^[3] *Id.*

^[4] Matthew R. Durose et al., *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, U.S. DEP’T JUST., 7–8 (Apr. 2014) <https://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

^[5] *Indianapolis-Marion County City-County Council Re-Entry Policy Study Commission Report*, INDIANAPOLIS-MARION COUNTY CITY COUNCIL IND. (July 2013) <http://www.indy.gov/eGov/Council/Committees/Documents/RE-ENTRY/Re-entry%20Policy%20Report.pdf>.

^[6] *Id.* at 10.

^[7] See Stacy A. Hickox, *A Call to Reform State Restrictions on Hiring of Ex-Offenders*, 12 STAN. J.C. R. & C.L. 121, 143 (2016); Jemima Galan, *Banning the Box, Building a Future; How Expansion of California’s Legislation Would Mend the Threaded Strands Between Recidivism and Employment in Criminally Convicted Offenders*, 37 U. LA VERNE L. REV. 343, 347–48 (2016).

^[8] Hickox, *supra* note 7, at 143.

^[9] *Id.* at 143–44.

^[10] Galan, *supra* note 7, at 347–48.

^[11] *Id.*

^[12] Roy Maurer, *Hiring Ex-Offenders has Business, Societal Impacts*, Soc’y HUM. RESOURCE MGMT (April 20, 2016) <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/2016-talent-management-conference-hiring-exoffenders-max-dubroff.aspx>.

^[13] *Id.*

^[14] National Institute of Justice, *Research on Reentry and Employment*, OFF. JUST. PROGRAMS (Apr. 3, 2013) <https://www.nij.gov/topics/corrections/reentry/pages/employment.aspx#note1>.

^[15] See Cherrie Bucknor & Alan Barber, *The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies*, CTR. ECON. & POL’Y RES., (June 2016) <http://cepr.net/images/stories/reports/employment-prisoners-felonies-2016-06.pdf>

^[16] Structural unemployment is the technical economic term that refers to a “longer-lasting form of unemployment caused by fundamental shifts in an economy and exacerbated by extraneous factors. Jobs are available, but there is a serious mismatch between what companies need and what workers can offer.” *Structural Unemployment*, INVESTOPEDIA LLC <https://www.investopedia.com/terms/s/structuralunemployment.asp> (last visited July 24, 2018).

^[17] Maurer, *supra* note 12.

^[18] National Institute of Justice, *supra* note 14, at 2.

^[19] *Id.*

^[20] Jennifer Leavitt, *Walking a Tightrope: Balancing Competing Public Interests in the Employment of Criminal Offenders*, 34 CONN. L. REV. 1281, 1286 (2002).

^[21] *Id.* at 1309.

^[22] *Id.*

^[23] Marilyn C. Moses & Cindy J. Smith, *Factories Behind Fences: Do Prison ‘Real Work’ Programs Work?*, NAT’L INST. JUST. J. ISSUE No. 257, June 2007

^[24] *Id.*

^[25] *Id.*

^[26] National Institute of Justice, *supra* note 14, at 2.

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