

BRIEF

Dollar General ends EEOC background check suit with \$6M settlement

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Dive Brief:

- Dollar General has agreed to pay \$6 million to settle a U.S. Equal Employment Opportunity Commission (EEOC) lawsuit alleging that its use of criminal history in hiring decisions violated Title VII of the Civil Rights Act of 1964 because it had a disparate impact on black applicants (*U.S. Equal Employment Commission v. Dolgencorp, LLC*, No. 13-cv-4307 (N.D. Ill. Oct. 23, 2019)). In court papers, Dollar General denied the allegations.
- In addition to the monetary settlement, the discount retailer agreed to hire a "criminal history consultant" to evaluate the use of criminal conviction history in hiring decisions and to implement the consultant's recommendations within six months if it intends to use criminal conviction history.
- It also said it will not discourage those with criminal histories from applying for employment, and it will reconsider hiring those whose conditional offers of employment were rescinded based on criminal history. Dollar General will provide managers training that teaches them the store does not discourage individuals with criminal histories from applying for employment and that it has a reconsideration process for those who fail the criminal history background check.

Dive Insight:

Background check policies continue to land employers in hot water. Target paid \$3.7 million in April 2018 to resolve a class-action suit that alleged discrimination against African-American and Latino applicants after conditional job offers to two prospective employees were rescinded based on a 20-year-old misdemeanor conviction in one case and a decade-old felony conviction in the other. A company spokesperson said the retailer now gathers criminal background information in the final stages of the hiring process and applicants are given an opportunity to explain and provide information about the circumstances, mitigating factors, good conduct and rehabilitation.

In December 2018, minority drivers took Amazon to court over background checks. A group of black and Latino Amazon drivers sued the e-commerce giant, alleging that it discriminated against them when it fired them based on background check results, MassLive reported. The drivers claimed that Amazon adopted a background check policy in 2016 that had a disparate impact on minority workers, causing them to lose their jobs for offenses that were old and minor.

More recently, a class action lawsuit was filed against Macy's this summer alleging that, even when the convictions are old, minor and unrelated to the job, it rejects applicants, revokes offers and terminates the employment of people with criminal histories in violation of state and federal law. Lawyers in the lawsuit claim that the company's policy results in disparities in employment opportunities for minorities.

In addition to litigation and federal law, employers must keep an eye on state and local requirements. More than 180 states, counties and cities have adopted ban-the-box laws, according to the National Employment Law Project. Generally, these laws forbid

employers from conducting background checks until after an offer of employment is made and require them to review each situation on a case-by-case basis.

The EEOC maintains background check guidance for employers, although questions about its enforceability remain unresolved.