

# Uniformly enforce blanket 'no-hire' policies

Some employers don't want to hire applicants who haven't succeeded elsewhere and create a blanket no-hire rule for any applicant who isn't eligible for rehire by a former employer.

If you're tempted to do the same, make sure you enforce the rule uniformly and don't make exceptions.

**Recent case:** Harold Cornish, who has a history of suing employers and former employers, was fired because of alleged misconduct. His former employer put him on a "do not rehire" list.

He then applied for a position with the Dallas Independent School District, which had a rule in place automatically rejecting any applicant who was not eligible for rehire by former employers.

When his application was rejected, Cornish sued. He claimed he had been retaliated against because of his prior lawsuit history.

But the court concluded otherwise. It said that the school district had a legitimate reason not to hire him—namely that he was not eligible for rehire by his former employer. The school district also showed the court that it had refused to hire many other applicants under the same circumstances and had never made an exception. The case was dismissed. (*Cornish v. Dallas Independent School District*, No. 3:08-CV-1968, ND TX, 2010)

**Final notes:** Consult your attorney before implementing a no-hire rule. Make sure your policy won't have a disparate impact on a protected class. For example, refusing to hire anyone who has ever been arrested may discriminate on the basis of race or ethnicity.

The EEOC is currently looking at whether policies banning hiring of applicants with arrest or conviction records may disparately impact black and Hispanic applicants, given the percentage of those protected classes who have had contact with the criminal justice system.