

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

VERNON KEITH ROBINSON and
COURTNEY SMITH, on behalf of a
certified class,

Plaintiff,

v.

DES MOINES PUBLIC SCHOOLS,

Defendant.

Case No. LACL136651

AMENDED PETITION

The Plaintiffs, Vernon Keith Robinson and Courtney Smith, on behalf of a certified class, hereby files an amended petition to conform to the proof gathered during the class certification phase of the above-captioned class action, pursuant to Iowa Rule of Civil Procedure 1.402(4):

INTRODUCTION

1. This case challenges specific criminal background screening practices utilized by Des Moines Public Schools (DMPS) that are neither job related nor consistent with business necessity and that caused the exclusion of a disproportionate number of African American job candidates like Mr. Robinson and Ms. Smith, resulting in the violation of the Iowa Civil Rights Act's prohibition against disparate impact discrimination.

2. DMPS engaged in background screening practices that excluded job candidates from employment without consideration of their rehabilitative efforts or other mitigating circumstances.

3. Both Iowa Code § 272.2(14) and published Equal Employment Opportunity Commission guidance explain that considering rehabilitative efforts and mitigating circumstances are important screening considerations that employers should factor into their

criminal background screening policies.

4. By implementing criminal background screening practices that failed to consider rehabilitative efforts and mitigating circumstances, DMPS created an institutional barrier to employment opportunities that affected a disproportionate number of African American job candidates with conditional offers of employment like Mr. Robinson, Ms. Smith, and the class they represent.

THE PARTIES & PROCEDURAL HISTORY

5. DMPS includes 65 schools including 38 elementary schools, 12 middle schools, 5 high schools, and 10 alternative schools in the heart of Iowa. In addition to being responsible for the education of approximately 32,000 students in the metro area, DMPS employs nearly 5,000 employees.

6. DMPS' principal place of business is Des Moines, Polk County, Iowa.

7. Plaintiff Vernon "Keith" Robinson is currently a resident and citizen of Iowa.

8. Plaintiff Courtney Smith is currently a resident and citizen of Michigan.

9. Prior to filing this action, Mr. Robinson filed charges of employment discrimination with the Iowa Civil Rights Commission, alleging "class-wide adverse impact discrimination" stemming from "DMPS' use of background checks [that were] neither job-related nor a business necessity."

10. Mr. Robinson obtained a right-to-sue letter from the Iowa Civil Rights Commission and entered into a number of tolling agreements with DMPS that resulted in the timely filing of this action.

11. On December 12, 2018, District Court Judge Scott J. Beattie issued an order certifying this matter as a class action. On November 30, 2021, District Court Judge Lawrence

McLellan issued an order amending the December 12, 2018 Certification Order.

12. The class consists of all African Americans who from April 11, 2014 through December 12, 2018 were harmed by: (1) Des Moines Public Schools' practice of excluding applicants from employment based upon criminal background screening criteria without consideration of information relevant to whether the policy as applied to those applicants is job related and consistent with business necessity; or (2) Des Moines Public Schools' practice of excluding applicants from employment based upon whether or how thoroughly they disclosed their prior criminal conviction; or (3) both.

13. The class also consists of three subclasses for the purpose of analyzing damages: (1) a subclass of the African American applicants harmed only by DMPS' practice of excluding applicants from employment based on criminal background screening criteria without consideration of information relevant to whether the policy as applied to those applicants is job related and consistent with business necessity; (2) a subclass of the African American applicants harmed only by the District's practice of excluding applicants from employment based on whether or how thoroughly said applicants disclosed their prior criminal convictions; and (3) a subclass of those African American applicants who were harmed by both aspects of the District's criminal background check practice.

14. The class does not consist of any applicants who were statutorily barred from working for an Iowa school district due to their inclusion on abuse registries, any applicants who the Des Moines Public School District excluded solely because of non-criminal convictions such as arrests or traffic accidents, and any applicants who were hired by the Des Moines Public School District but only denied vehicle leases as a result of criminal conviction screenings.

FACTS

15. DMPS made a conditional offer of employment to Mr. Robinson, Ms. Smith, and each class member.

16. One of the conditions of the Class' offers of employment was passing a criminal background check.

17. During its deposition, DMPS admitted that its background check standard operating procedures apply to all applicants "who are conditionally offered a job with Des Moines Public Schools."

18. DMPS' standard operating background check procedures began with Mr. Robinson, Ms. Smith, and each class member consenting to have a criminal background screening report completed by a third-party consumer-reporting agency.

19. After each screening report was completed, a DMPS executive assistant reviewed the reports to determine whether there were any convictions.

20. Because Mr. Robinson, Ms. Smith, and each of the class members had criminal convictions, the next step of DMPS' standard operating procedure was for their backgrounds to be reviewed by a team of human resources employees who worked together to make sure their reviewing criteria was administered consistently "among all workers."

21. At the initiation of the review process, DMPS issued a pre-adverse action letter to Mr. Robinson, Ms. Smith, and each of the class members.

22. Each pre-adverse action letter informed the class members that they had the opportunity to "dispute any information in the report[s]."

23. Each pre-adverse action notice also informed the class members that if DMPS did not hear from them within five business days, DMPS would "consider the reports to be accurate."

24. None of the pre-adverse action letters sent to the class members asked them to provide information regarding rehabilitation efforts, information regarding whether the candidates performed the same type of work post-conviction with no know instances of criminal conduct, employment or character references, or any other information regarding fitness for the particular positions the class members were applying for.

25. When DMPS was asked during its deposition if DMPS considers whether a job candidate had rehabilitated him or herself after their last conviction, DMPS responded, “I don’t know how I would know that information unless it was provided. I would say that we look at more of time and pattern of behavior versus whether or not I know if they’ve gone through any type of rehabilitation.”

26. Consistent with this practice of not considering information about rehabilitation, in 2015, DMPS actually deleted the phrase “[f]acts such as date of occurrence and rehabilitation will be considered” from its application forms.

27. After at least five business days elapsed from the issuance of each class members’ pre-adverse action notice, DMPS’ human resources directors reviewed each class members’ convictions using a common screening policy listing twelve parameters.

28. None of the twelve parameters considered rehabilitative efforts.

29. DMPS’ screening parameters omitted any factors regarding rehabilitation efforts, evidence that individuals performed the same type of work post-conviction with no known incidents of criminal conduct, the length or consistency of employment history before and after offenses, and employment or character references.

30. Accordingly, when the Iowa Civil Rights Commission asked a DMPS background screener, Director Tiffany O’Hara, if she took into account evidence of candidates performing

work post-conviction with no known incidents of criminal conduct, she confirmed she did not.

31. DMPS also enacted a screening practice whereby if it determined that a conditionally hired applicant failed to fully disclose a conviction on an application, DMPS used non-disclosure as a reason to reject them from employment.

32. DMPS' written background check policy states that the "primary goal [of its background check policies] is the safety of students and staff.

33. During its deposition, DMPS admitted that the reason it conducts background checks is "[b]ecause anyone who works with our students, staff, and community, we want them to go through the same review process for safety and security."

34. DMPS' practice of screening job candidates' criminal histories without consideration of rehabilitative efforts or mitigating circumstances is not a business necessity because employers can still provide for the safety and security of students, staff, and the community by conducting background screenings that consider job candidates' rehabilitative efforts and mitigating circumstances.

35. For example, the Iowa Board of Educational Examiners' background screening practices provide for the safety and security of students, staff, and the community even though the Iowa Board of Educational Examiners considers the rehabilitative efforts and mitigating circumstances of licensing applicants with criminal convictions.

36. Urbandale School District also conducts criminal background screening practices that provide for the safety and security of students, staff, and the community even though Urbandale considers the rehabilitative efforts and mitigating circumstances of job candidates with criminal convictions.

37. Shortly after DMPS excluded Mr. Robinson from employment, Mr. Robinson

applied for a job with Urbandale School District.

38. Urbandale School District screened Mr. Robinson's criminal history, considered his rehabilitative efforts and mitigating circumstances, and hired him to be an employee, further substantiating that DMPS' background screening practices that failed to consider rehabilitative efforts and mitigating circumstances were not job-related and consistent with business necessity.

39. DMPS also admitted that the reason it assesses whether applicants disclose their convictions is "to maintain a safe and secure environment for students, staff, and community members" and to assess applicants' propensity for "trustworthiness."

40. When DMPS was asked whether it was possible to maintain a safe environment and assess applicants' propensity for trustworthiness by means other than criminal conviction self-disclosures, DMPS admitted, "It's possible," showing that DMPS' non-disclosure assessments are not a business necessity.

41. DMPS further admitted that it has refused to adopt alternative practices to non-disclosure screenings, including practices whereby DMPS could still assessed applicants' propensity for safety and trustworthiness in the workplace without asking candidates to self-disclose their crimes on their initial applications.

42. After concluding its review of Mr. Robinson's, Ms. Smith's, and each class member's convictions, DMPS excluded them from employment by issuing each of them a final adverse action letter.

**COUNT I
VIOLATION OF THE IOWA CIVIL RIGHTS ACT
DISPARATE IMPACT DISCRIMINATION**

43. Plaintiff repleads all other paragraphs provided in this Petition and incorporates the same by reference as if fully set forth herein.

44. The Iowa Supreme Court held that the disparate impact cause of action “focuses on the consequences of the employer’s conduct” instead of focusing on “the employer’s motivation.” A disparate impact cause of action “presents an avenue for addressing inequalities in the absence of intentional discrimination.”

45. Disparate impact prohibits employer practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another.

46. DMPS’ criminal background screening practices are facially neutral in their treatment of different racial groups.

47. A history of racial inequities in United States’ criminal justice system have resulted in African Americans being disproportionately convicted of criminal offenses.

48. By excluding individuals from employment with criminal background screening practices that are not job related and consistent with business necessity, DMPS incorporates racial inequities in the criminal justice system into its hiring process.

49. DMPS admits that during the class period, there were 195 job candidates who were not statutorily barred from working for the district who DMPS excluded from employment pursuant to its criminal background screening practices.

50. Through the use of racial self-disclosures on employment applications and racial identifications made by police officers on citations and arrest records, Plaintiff has determined that 89 of the non-statutorily barred excluded candidates were African American, while the remaining excluded candidates were either Caucasian (approximately 88 exclusions), Hispanic (approximately 8 exclusions), American Indian or Alaska Native (approximately 2 exclusions), Native Hawaiian or Other Pacific Islander (approximately 2 exclusions) or Asian (approximately 6 exclusions).

51. DMPS' criminal background screening practices fall more harshly on African American job candidates, as shown by the fact that out of the 195 job candidates who DMPS excluded from employment during the class period, 89 were African American.

52. In other words, approximately 46% of the individuals DMPS excluded during the class period pursuant to its criminal background screening practices were African American.

53. DMPS' 2016 Affirmative Action and Equal Employment Opportunity Plan states that no more than 9.5% of its applicant pool was African American.

54. In light of the fact that no more than 9.5% of DMPS' applicant pool was African American and approximately 46% of the individuals DMPS excluded pursuant to its background screening policies were African American, a stark statistical disproportionality exists supporting a finding of disparate impact.

55. DMPS used particular screening practices whereby they reviewed job candidates' criminal backgrounds without consideration of rehabilitation efforts, information regarding whether the candidates performed the same type of work post-conviction with no known instances of criminal conduct, employment or character references, or any other information regarding fitness for the particular positions the class members were applying for.

56. The particular screening practices DMPS used whereby they screened job candidates' criminal backgrounds without consideration of rehabilitative efforts or mitigating circumstances was not job related and consistent with business necessity because many employers, including other Iowa school districts and the Iowa Board of Education Examiners, perform criminal background checks that include consideration of applicants' rehabilitative efforts and mitigating circumstances without jeopardizing the safety and security of students and staff.

57. Additional particular screening practices may be identified through the course of discovery.

58. DMPS could have implemented less discriminatory alternative employment practices that served its legitimate goals but has refused to adopt those practices.

59. As a proximate result of Defendants' acts and omissions, the Plaintiff and the class he represents have in the past and will in the future suffer damages including, but not limited to, mental and emotional distress, fear, anguish, humiliation, intimidation, insecurity, embarrassment, lost enjoyment of life, lost wages, benefits, future earnings, and other emoluments of employment.

60. In addition, the named Plaintiff and the class he represents are entitled to equitable relief including but not limited to: 1) benefits not measured as compensatory damages, including relief to offset any damage to their reputations, 2) injunctive relief prohibiting Defendant DMPS from subjecting future applicants to discriminatory criminal history screenings, 3) injunctive relief requiring DMPS to hire applicants who were screened out of the company's hiring process due to criminal background screenings resulting in disparate impact, and 4) other forms of equitable relief available under the Iowa Civil Rights Act.

WHEREFORE, Plaintiff and the class he represents, demand judgment against Defendant in an amount which will fully and fairly compensate them for their injuries and damages, for interest as allowed by law, for attorneys' fees, for the costs of this action, for appropriate equitable and injunctive relief, and for such other relief as may be just in the circumstances and consistent with the purpose of the Iowa Civil Rights Act.

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