The aggregate effect of individual employers having blanket exclusions of ex-convicts is that ex-convicts are able to rebuild their lives after they complete their sentences. This leads to recidivism, for which society pays in increased crime, as well as the cost of further incarcerations. With so many adults having a criminal record, the potential impact of recidivism is huge.

Many companies have had a blanket exclusion policy—any applicant who checks the prior arrest box on the job application is automatically rejected, and the firm makes no further effort to determine the reason the box was checked. With blanket exclusions, no one with any criminal history can get a foot in the door for a job. This raises two issues: 1) The societal cost of recidivism and 2) The racial discrimination from disparate impact.

According to the National Employment Law Project (NELP), one in four adults in the United States has a criminal record. Without meaningful opportunities for gainful employment, people with histories of arrest and/or conviction are increasingly likely to relapse into the behaviors that got them into trouble in the first place. The aggregate effect of individual exclusions is that the person is automatically rejected from the job, and the firm makes no further effort to determine the reason the box was checked. With blanket exclusions, which the person is applying.

The crime, the time that has elapsed since the crime, the person’s qualifications, and the job for which the person is applying.

Excluding the societal impact is the fact that people with criminal records disproportionately affect people of color. Because incarceration rates are higher for African American and Hispanic men, blanket exclusions of people with criminal records have a disparate impact that violators Title VII of the Civil Rights Act of 1964.

Two types of discrimination violate Title VII. Disparate impact discrimination in which people in a protected class are subjected to conditions because of their age, race, gender, etc. Disparate impact occurs when the application of a seemingly neutral criterion results in a disparate impact. A classic example is the application of minimum height and weight requirements that once excluded a significant portion of African American women.

In January 2012, the EEOC entered into a conciliation agreement with PepsiCo, charging that African American applicants were disproportionately denied employment because they failed the company’s criminal background check. A year later, the EEOC filed lawsuits against Dollar General and a South Carolina BMW manufacturing plant. In both cases, the EEOC accused the companies of discriminating against African Americans.

A change in logistics services caused a change in the logistics services’ background check. A year later, the EEOC filed lawsuits against Dollar General and a South Carolina BMW manufacturing plant. In both cases, the EEOC accused the companies of discrimination against African Americans.

The Dollar General case involved two applicants. The company gave the employee a conditional job offer but then subsequently revoked it when screening uncovered a six-year old conviction. Even though the participant had disclosed the conviction in the interview and had worked successfully for another retailer in a similar position for four years.

The backlash against banning of blanket exclusions for ex-offenders has been fierce. Opponents describe the measure as job-killing and express concerns that the costs entail will cripple businesses. The Wall Street Journal opined that the exclusion of ex-offenders discriminates against criminals, irrespective of their race or gender. The state of Texas sued the EEOC, arguing that the ban on blanket exclusions infringes on state sovereignty and creates a safety hazard.

At the same time, pressure has been mounting to support a ban on the blanket exclusion box. According to an NELP study, the vast majority of local jurisdictions have adopted “ban the box” initiatives, removing employment application questions that ask about arrest and conviction history. Some of these policies apply only to public employers, while others apply to contractors and/or private employers. The issue continues to provoke impassioned debate.

In the case of banning the box, it may be in the employer’s self-interest to have a lower cost of excluding people with criminal histories. Blanket exclusions are quick and easy to do because they do not require the employer to take the time to look more closely at the applicant. However, the impact of blanket exclusions is significant for society. That significance is magnified by the size of the US population with a criminal history.

People who are closed off from meaningful opportunities to earn a living will turn to crime out of desperation. Providing opportunities for people who “paid their dues” is in everybody’s best interests.

Some firms even find that careful hiring can result in an employee who excels beyond the regular line. The case is that ex-convicts know that the job market is tilted against them and so they are often grateful for the opportunity and willing to work especially hard to earn and keep it. Many ex-convicts agree to work jobs that are commonly very hard to fill. Businesses like convenience stores that typically measure employee job tenure in months report that ex-convicts will often remain for years. In addition, businesses can reduce hiring costs by hiring ex-convicts who are already certified by the state, which saves the company the cost of further incarcerations. With so many adults having a criminal record, the potential impact of recidivism is huge.

The size of the United States prison population is well established, as is the fact that it is the largest in the world. What is least certain is what these 2.8 million people (1 in 35 adults) can do after they have paid their debt to society. Employers have commonly included a box on employment applications for applicants to check if they have any previous arrests or convictions.