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THE MEYERS REPORT

by Gary S. Meyers and Robert Genetski, Ph. D.

New Employment Protections For Convicted Criminals

Your company doesn't want to hire someone because they have a criminal record? Be careful how you say "no." You could get investigated, or sued, by the EEOC.

On April 25th, the Equal Employment Opportunity Commission (EEOC) voted 4-1 and approved new guidelines on how employers can, or cannot, use criminal records in their hiring decisions. The idea is to reduce possible racial discrimination, because those with arrest and conviction records statistically are more likely to be minorities. (http://www.eeoc.gov/eeoc/newsroom/release/4-25-12.cfm) There are several functional problems with the EEOC's latest efforts to relate before we get to EEOC stated goals:

1. EEOC's unilateral effort. Before finalizing the guidelines, the EEOC did not release a draft for public hearing, response or notice. As a result, it is not likely that the EEOC sufficiently vetted all of management's legitimate concerns—and opened the door for significant legal challenges.

2. Previously defined non-discrimination policies now voided. In the past, having blanket policies protected employees and job candidates from employers' arbitrary decisions. Employers were protected from discrimination suits, because the blanket policies were non-arbitrary. The EEOC's new requirements will increase complaints and litigation from these arbitrary judgments.

In a reversal of past procedures, employers with blanket policies that prohibit the hiring of those who committed certain job-related crimes, will be targeted for investigation or litigation, according to EEOC Commissioner Victoria Lipnic.

The risks are very great, especially in light of recent remarks at a public hearing by EEOC Commissioner Stuart J. Ishimaru, when he noted that currently hundreds of employers are being investigated for their use of criminal records in their hiring decisions.

3. Added costs for employers. The guidelines apply to all employers, regardless of size. "Any EEOC investigation arising from the use of background checks can be costly and disruptive—even if an employer's practices are found to be sound and no litigation is initiated," said attorney Steven Pearlman, employment law expert in Seyfarth Shaw's Chicago office. "Hiring will be slowed and will be more expensive." Eventually, the guidelines will be challenged in court by industry groups, but in the meantime, there will be a price and businesses hiring will be slowed.

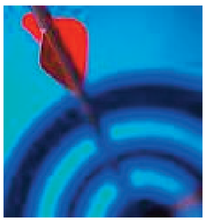
As with many social engineering ideas, there is a raft of unintended consequences. The theory is that because minorities were more inclined to have arrest and conviction records, their personal histories could limit their employment, and this might be discriminatory—or it might not.

While hiring policies may be facially neutral, the EEOC and the private plaintiffs' bar can be expected to savor the opportunity to pursue "disparate impact" discrimination claims—based on the idea that using such policies may hurt minority applicants. Pearlman added that employers should try to minimize the risks by making individualized assessments where possible and focusing on: The nature and gravity of the offense; the time that has passed since the conviction; and the nature of the job at issue.

Yes, the EEOC will allow that operators of a day care center don't need to explain why they would not hire sex offenders. And, pharmacies and financial institutions should not be required to hire convicted drug offenders or thieves. However, what about other businesses, such as distribution warehouses or any retail business where people operate a cash register and where shrinkage comes at an overwhelming cost? Then, what about negligent hiring or retention risks that may arise where an employee does something to a customer—especially if the employer had foreknowledge of an employee's criminal record. The liability potential could be endless.

The Bottom Line. Have your hiring and employment procedures and manuals reviewed by an expert in employment law. Study the EEOC's guidance and make sure your decisions are based on legitimate business related reasons.

THE MEYERS REPORT Economic Notes



We reviewed the forecasts we published here on January 9, 2012. Here is the status of some as of last Friday's close of business. We'll keep you posted on the others as results are shown.

Instrument	Forecast	Actual April 27th
10-year Treasury	2.01-2.30%	1.96%
2-year Treasury	0.20-0.55%	0.26%
90-day Treasury	0.30-0.50%	0.09%
2012 Silver (up to)	$33-$45)	$31.32
Oil	$115-$120	WTI $104
		Brent $119
Japan Yen	88.5+	80.30

HUMOR

Having arrived at the edge of the river, the fisherman soon realized he had forgotten to bring any bait. Just then he happened to see a little snake passing by who had caught a worm. The fisherman snatched up the snake and robbed him of his worm. Feeling sorry for the little snake with no lunch, he snatched him up again and poured a little beer down his throat. Then he went about his fishing.

An hour or so later the fisherman felt a tug at his pant leg. Looking down, he saw the same snake with three more worms in his mouth...

Case in point ...

"When I first went to CCF, it seemed that the world was collapsing. We had law suits coming and going, producing nothing but a cash-drain. We were running out of money and winning nothing. Everything seemed hopeless. Five hours after meeting these people, I knew there was a G-d."

K. B., widow who inherited defunct auto dealership

Challenges: Foreclosure & Mortgage Deficiency; Bad Lease; Excessive Real Estate Commission Liability; Unfunded Benefits Liability; Civil RICO Complaint; Ineffective Attorney; Running Out of Cash; Bankruptcy.

CCF Action: Mortgage Financing; Market Analysis of Real Estate Value & Use; Land Use & Land Entitlement Law; Knowledge of Real Estate Lease & Economics; Banking Regulations & Law; Bankruptcy Law; Civil & Criminal RICO Prosecution; Labor Law & Negotiation; Automotive Dealership Law; Media Use for Maximum Coverage.

Conclusion: In 29 business days CCF: stopped foreclosure; removed need for bankruptcy; structured deal with the bank; removed real estate brokerage commission liabilities; positioned bank to come out whole with no write-offs, pending the outcome of continued civil RICO prosecution; stopped lawsuit by labor union forever; found alternative funding source to prosecute civil RICO suit; stopped client's legal fees.

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Robert Genetski's Weekly Financial Update & Stock Impact Gauge

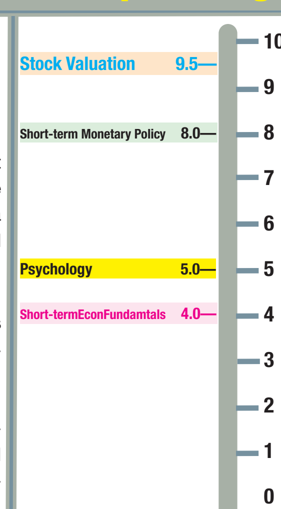
	Fundamental	Actual	Immediate Outlook
Fixed-income: 10-yr Treas.	5.0	1.96	neutral
Equities: S&P 500	2000	1400	neutral
Equities: Dow Jones	16,000	13,205	neutral

Friday's GDP report shows much slower activity than I had expected for the first quarter. The Fed's monetary stimulus apparently produced only a 3.8% annual rate increase in spending in the fourth and first quarters. While I continue to expect a pickup in spending in the months ahead, economic numbers this coming week will help determine the extent to which this is occurring.

Market Outlook Stock prices moved higher this past week with the major indexes advancing 1½% to 2½%. The upturn moved all major indexes back above their 50-day averages.

The upturn in stocks came in spite of disappointing economic news, which is an encouraging sign. However, the sharp increase in stock prices has been accompanied by only average trading volume. It would be more encouraging if institutional investors were moving more aggressively into stocks.

For all major indexes, the 10-day average remains below the 50-day average. However, the latest upturn is about to send the 10-day above the 50-day average for several of the indexes. Such a move would improve market psychology.



Ratings for forces impacting stocks
10 is best
— means no change
> change for better
< the other direction

Another potentially positive factor is the overall market closing above the lower end of an upward sloping channel. If the overall market is able to maintain a position above this channel, its 10-day average will cross above the 50-day average. Such a development would also raise the odds of further gains and justify moving from neutral to a fully invested position in equity portfolios.

Longer-term interest rates bounced around this past week and ended up close to where they were a week ago. After an aborted move upward it appears longer-term rates are again settling back to the range that has existed for much of the past year.