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New Discrimination Lawsuit Filed Against Macy's, Inc. over Criminal History Screening Policy

The NAACP Legal Defense and Educational Fund, Inc. ([LDF](#)), the law firm of Outten & Golden LLP ([O&G](#)), and Youth Represent ([YR](#)) filed a lawsuit today in the Southern District of New York against Macy's, Inc. (Macy's), challenging its use of an unnecessarily punitive criminal history screening policy. According to the lawsuit, the policy disproportionately disqualifies Black and Latinx applicants and employees from job opportunities in violation of Title VII of the Civil Rights Act of 1964 (Title VII) and the New York City Human Rights Law.

Plaintiffs, [The Fortune Society, Inc.](#) (Fortune) and Ms. Jenetta Rolfer, seek to change a screening policy that they allege results in a disproportionate number of otherwise qualified Black and Latinx job applicants and employees being denied employment or terminated due to their criminal background histories, including for minor or very old convictions that are unrelated to the positions at issue.

Fortune, a nonprofit community-based organization that supports successful community reentry, including job-training and placement services, alleges that hiring practices at Macy's affect its participants who work at or apply for jobs and are rejected or terminated because of the company's policy.

JoAnne Page, President and CEO of The Fortune Society, said, "Collateral consequences from convictions, such as discriminatory hiring policies, serve only to further punish and marginalize already vulnerable communities. Most people we serve at The Fortune Society are in fragile housing, financial, physical, or emotional circumstances. People need real opportunities to help reclaim their life, not more obstacles." Ms. Page added, "All applicants deserve to be evaluated based on the qualifications necessary to perform the job, independent of any justice history. Given a fair opportunity to succeed, people with justice system involvement would add significant value to the workforce at Macy's."

“The criminal history screening policy at Macy’s denies jobs to many qualified applicants and employees. Overly restrictive and punitive criminal history screening policies can disproportionately impact Black and Latinx workers, due to racial discrimination in the criminal justice system,” said [Sherrilyn Ifill](#), **President and Director-Counsel at LDF**. “Macy’s must amend its discriminatory criminal history screening policy and create more economic opportunities for deserving Americans.”

Ms. Rolfer, a Black professional, was hired to work at a Macy’s Credit Granting Department, but was abruptly terminated by the company for a misdemeanor conviction stemming from a decade-old traffic related incident. Reflecting on her experience, **Ms. Rolfer said**, “I was excited to work for Macy’s. I was qualified and had the experience to do the job well and it was a great opportunity for me and my family. I was devastated to be fired over information in my background check that is unrelated to my ability to be a productive employee.”

Ms. Rolfer alleges that Macy’s has violated the Fair Credit Reporting Act by rejecting applicants or terminating employees based on information contained in criminal background reports without providing individuals with a copy of their report, a notice of their rights, or a timely notification of its intent to take an adverse employment action. This prevents individuals from, among other things, disputing inaccurate information in their reports prior to denial or termination of employment.

The lawsuit follows a May 2017 discrimination charge against Macy’s that was filed with the Equal Employment Opportunity Commission (EEOC) by O&G on behalf of Fortune, whose clients are 93% Black or Hispanic/Latinx. Ms. Rolfer filed her discrimination charge with the EEOC in February 2019.

LDF, O&G, and YR also represent former Macy’s applicants and employees who were denied employment or terminated by Macy’s because of their criminal background, but who are barred from joining the lawsuit because of a mandatory arbitration provision that the company required them to sign. Mandatory arbitration provisions forbid employees from going to court to enforce their rights, requiring them instead to bring their disputes before private arbitrators in non-public proceedings.

“We have seen many advances in the law to assist with the successful community reintegration of individuals with criminal histories,” said [Cheryl-Lyn Bentley](#), **an attorney at Outten & Golden**. “However pernicious hiring practices screening out applicants and employees based solely on their criminal histories set us all back and are antithetical to principles of fairness and justice.”

“Denying employment for qualified candidates leaves people unable to support themselves and their families,” said [Michael Pope](#), **Interim Executive Director at Youth Represent**, “and further perpetuates racial discrimination in our criminal justice system.” Mr. Pope added, “Not to mention, Macy’s is losing out on an incredible pool of qualified, passionate, and dedicated employees.”

Read the full complaint [here](#).

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***The NAACP Legal Defense and Educational Fund, Inc. (LDF)** has a long history of fighting for economic justice and equal opportunity in the workforce, including in the 1971 Supreme Court’s seminal case [Griggs v. Duke Power Company](#), which recognized the unjustified disparate impact theory of liability under Title VII. Additionally, for more than a decade, LDF has worked to combat discriminatory barriers facing people with criminal records. In December 2017, LDF announced a settlement of its case against the [Washington Metro Area Transit Authority](#) regarding its criminal background screening policy for job applicants and employees. And in April 2018, LDF and O&G reached a [\\$3.74 million settlement](#) with Target Corporation to resolve allegations that its overly broad and outdated criminal background check policy discriminated against African-American and Latinx job applicants.*

LDF is the nation’s first civil and human rights law organization and has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.

***Outten & Golden**, an employment and civil rights law firm, is committed to representing individuals who have been denied employment because of their criminal histories. In 2017 the firm received the 2017 Trial Lawyer of the Year Award from Public Justice for an unprecedented class action settlement after achieving class certification in a case challenging the use of criminal history records to deny hundreds of thousands of applicants temporary jobs during the 2010 decennial census.*

***Youth Represent**, a nonprofit legal organization, is dedicated to improving the lives and futures of young people affected by the criminal justice system. Founded in 2006, Youth Represent has developed a community-lawyering model that combines direct legal representation, youth leadership and civic engagement, and advocacy for systemic reform. Youth Represent provides rap sheet review and employment counseling to thousands of justice-involved youth, along with comprehensive legal representation when youth people face employment discrimination, eviction, school suspension, summonses, warrant returns and other criminal and civil legal issues. Youth Represent uses the insights gleaned from its direct representation to inform its policy and strategic litigation work.*

***The Fortune Society** has advocated on criminal justice issues for more than five decades and is nationally recognized for developing model programs that help people with criminal justice histories grow as assets to their communities. Fortune offers a holistic and integrated*

model of comprehensive service provision. Among the services offered are discharge planning, licensed outpatient substance use and mental health treatment, benefits enrollment and access, alternatives to incarceration, HIV/AIDS case management, health services, career development and job retention, education, family services, and supportive housing as well as lifetime access to aftercare.