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Amendment to Child Protective Services Law Eliminates “Provisional” Background Checks for Schools

SUMMARY

Any Pennsylvania university, college or K-12 school that had allowed employees to begin working while their state-mandated background checks were pending is no longer able to do so under an amendment to the Child Protective Services Law Act (“CPSL”) that went into effect December 31, 2019.

Prior to the new amendment, CPSL had allowed an employer to hire “applicants on a **provisional basis** for a single period not to exceed 90 days” if five conditions had been met (emphasis added). The five conditions included: (1) proof that an applicant had applied for the background checks mandated by the CPSL; (2) a signed statement from the applicant confirming that they had not been disqualified from employment pursuant to the CPSL or under the laws of another state; (3) confirmation that the employer had no knowledge about the applicant that would disqualify the applicant from employment pursuant to the CPSL; (4) confirmation that if the employer had learned of disqualifying information about the applicant then the applicant would be immediately dismissed; and (5) that the employer would prevent the applicant from having direct contact with children until all clearances were confirmed. Many schools had thus allowed “provisional” employment for applicants awaiting clearance results.

The amendment expressly removes the provisional-hire option, at least for schools. Specifically, the CPSL now reads: “§6344 (m) *Provisional employees for limited periods.* – Employers, administrators, supervisors or other persons responsible for employment decisions **may not** employ applicants on a provisional basis... .” (emphasis added). The only entities that may apply for a 45-day waiver under the previous conditions include child day-care centers, group-day care centers or family child-care homes.

Naturally, this amendment could impact the manner and timing of a school’s hiring process. [In a public notice](#), however, the Pennsylvania Department of Human Services stated that it is required to process Pennsylvania Child Abuse History Clearances within 14 days from the day in which the request is received and Federal Bureau of Investigation (FBI) criminal history background checks within 30 days from the date of receipt. These publicly-stated timelines, assuming they are followed, may create a structure that allows many educational institutions to adjust their hiring processes moderately in order to account for the previously-used provisional timeframes.

Saul Ewing Arnstein & Lehr attorneys regularly advise higher education institutions and K-12 schools on legal and compliance issues. If you have any questions regarding the changes to the CPSL or any issue related to employee background checks, please contact the author or the attorney at the firm with whom you are regularly in contact.

This alert was written by Kathryn Beaumont Murphy, co-chair of the Firm’s K-12 Schools Practice. Kathryn can be reached at (215) 972-1955 or at Kathryn.Murphy@saul.com. This publication has been prepared for information purposes only.

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