

Ban on Hiring Health Care Workers with Criminal Histories Rejected by Pa. Appellate Court

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SUMMARY

A Pennsylvania appellate court has ruled that health care providers providing older adult protective services (nursing homes, long term care facilities and home care agencies) are no longer prohibited from employing individuals with certain criminal histories.

Certain Pennsylvania health care providers providing older adult protective services are no longer prohibited from employing individuals with certain criminal histories—at least according to one Pennsylvania appellate court. In a recent decision in *Peake v. Commonwealth*, the Pennsylvania Commonwealth Court ruled that the Older Adults Protective Services Act's (the "Act") lifetime ban on employment of individuals who have been convicted of certain crimes is unconstitutional and unenforceable. The Act applies to Pennsylvania health care providers providing older adult protective services, e.g., nursing homes, long term care facilities, and home care agencies. The Act's "employment ban" provisions were intended to protect older adults in particular health care settings from abuse, neglect, exploitation and abandonment.

The Commonwealth Court held that the Act created an improper presumption that applicants who had been convicted of certain offenses—regardless of the amount of time passed or the surrounding circumstances—are unfit for employment in some older adult protective services settings. In reaching its decision, the Court concluded that Act-covered entities "...should have the opportunity to assess the situation and exercise their discretion to employ an applicant found to be sufficiently rehabilitated and a good fit for the job."

Although the Pennsylvania Supreme Court has not ruled on the issue (and Respondents have not yet filed an appeal), Pennsylvania employers subject to the Act should not automatically reject applicants based solely on the "employment ban" provisions. Rather, employers should conduct a case-by-case analysis considering the applicant's qualifications, the position the applicant seeks to fill, and the applicant's criminal history to determine whether the individual is fit for duty. In most situations, crimes that precluded employment in the past may still discourage an Act-covered employer from offering employment. That said, Act-covered employers should reevaluate their background check policies and procedures to ensure that applicants are being screened properly and in accordance with current law.

Saul Ewing attorneys have significant experience helping health care providers navigate complex labor and employment laws. For more information on these matters, please contact the authors or the attorney at the firm with whom you are regularly in contact.

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