



June 3, 2003

Employment Application Class Action Alert

A class action lawsuit alleging more than one hundred California employers have been asking prohibited questions on their employment applications was recently filed in Los Angeles County Superior Court. More specifically, the suit alleges that the employers violated California law by asking applicants improper questions about their criminal history.

Under California law, employers may not require prospective employees to divulge their entire criminal history. For instance, employers may not seek information about: certain marijuana-related convictions that are more than two years old; convictions that have been sealed, expunged, or eradicated; and certain misdemeanor convictions for which probation has been completed or otherwise discharged and the case dismissed. Hence, an application that asks a blanket question about whether the applicant has ever been convicted of a crime could be deemed overbroad and unlawful.

Employers with multi-state operations or those that have adopted "form" employment applications are particularly susceptible to (unknowingly) asking prohibited questions. Indeed, many of the employers named as defendants in the Los Angeles class action case are large companies based outside of California, and they apparently used a single application for operations throughout the United States.

Employer liability for violating the provisions of California law governing inquiries into an applicant's criminal history appears modest at first blush. For some unintentional violations, the expense is \$200 or actual damages (whichever is greater), plus attorneys' fees. For some intentional violations, the expense is \$500 or actual damages (whichever is greater), plus attorneys' fees. However, the pending Los Angeles class action

lawsuit seeks damages on behalf of all applicants for employment. Given the huge pool of potential claimants, employers named in such a class action could face significant exposure.

Furthermore, because it is quite easy for an individual to request and complete employment applications that contain prohibited questions, there is a good possibility that "copycat" class actions will be filed against other California employers in the near future. Consequently, Sheppard Mullin urges all employers to carefully review their employment applications to make certain they comply with California's unique laws regarding inquiries into an applicant's criminal history.

* * *

Terry Chapko is an associate in the Labor and Employment Practice Group in Sheppard Mullin's San Diego office. For more information on this issue, please contact him at tchapko@sheppardmullin.com or at (619) 338-6616.

We hope that these short alerts are useful to you. If you would like to be taken off the distribution list, please contact us at laborupdate@sheppardmullin.com.