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New "Pass the Trash" Law Requires Vetting of Job Applicants to Protect Against Child Abuse and Sexual Misconduct

On April 11, 2018, Governor Phil Murphy approved new legislation which will impact all New Jersey school boards, charter schools, and their contracted service providers when it takes effect on June 1, 2018. The act, commonly known as the "Pass the Trash" law, is intended to prevent child abuse and sexual misconduct by requiring specific information from current and previous employers before applicants are hired for positions involving regular contact with students.

Applicants Must Be Required to Provide Specific Information

The employers covered by the law are school districts, charter schools, and nonpublic schools, as well as contracted service providers who hold contracts with these employers. In seeking to fill a paid position which will involve regular contact with students, the employer must require all applicants to provide the following:

(1) A list of contact information for any current employer and all former employers within the last twenty years where the applicant was employed by a school, or in a position involving direct contact with children;

(2) A written authorization that consents to disclosure of the information requested by the prospective employer, and releases former and current employers from any liability arising from the disclosure; and

(3) A written statement as to whether the applicant has ever:

- Been the subject of any child abuse or sexual misconduct investigation by any employer, state licensing agency, law enforcement agency, or the Department of Children and Families ("DCF");
- Been disciplined, discharged, non-renewed, asked to resign from, resigned from, or separated from any employment while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct; or
- Had a license or certificate suspended, surrendered, or revoked while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct.

Penalties for Applicants Who Do Not Comply

An applicant who willfully provides false information or fails to disclose the information required is subject to criminal prosecution, as well as a civil penalty of up to five hundred dollars,

and may face discipline up to and including termination or denial of employment. The employer must include a notification of these penalties on all applications for employment relating to positions which involve regular contact with students.

School Board's Review of Applicant's Employment History

In conducting an employment history review, employers must inquire with the current and former employers of all applicants about any instances of sexual misconduct or child abuse which were reported, investigated, or confirmed. Specifically, an employer must request the following from all current and former employers listed by the applicant:

(1) The applicant's dates of employment; and

(2) A statement as to whether the applicant:

- Was the subject of any child abuse or sexual misconduct investigation by any employer, state licensing agency, law enforcement agency, or the DCF;
- Was disciplined, discharged, non-renewed, asked to resign from, resigned from, or separated from any employment while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct; or
- Has ever had a license or certificate suspended, surrendered, or revoked while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct.

Disqualification of Applicants

If a former employer does not provide the requested information within twenty days, the applicant may be automatically disqualified. The prospective employer "shall not be liable for any claims brought by an applicant who is not offered employment or whose employment is terminated" for the following reasons: (a) because of any information received by the employer pursuant to the law; or (b) because the employer was unable to conduct a full employment history review as required by the law.

Immunity for Employers

The legislation explicitly provides that employers and school administrators are immune from criminal and civil liability for disclosing information as required by the law, unless it was knowingly false. In addition, information received by an employer under the new legislation may not be considered a "public record" under the Open Public Records Act ("OPRA") or the common law right of access to government records.

Prohibited Terms in Settlement and Severance Agreements

The law also prohibits any contract, agreement, or action that would:

- Have the effect of suppressing or destroying information relating to an investigation related to a report of suspected child abuse or sexual misconduct by a current or former employee;
- Affect the ability of the employer to report suspected child abuse or sexual misconduct to the appropriate authorities; or
- Require the employer to expunge information about allegations or findings of suspected child abuse or sexual misconduct from any documents maintained by the employer, ***unless*** after investigation the allegations are found to be false or the alleged incident of child abuse or sexual misconduct has not been substantiated.

Accordingly, school districts must be careful to avoid legal violations when entering into agreements to settle claims asserted by employees relating to the termination of employment. Settlement terms requiring that the school district will provide a "neutral reference" and nothing more are likely to be found unenforceable.

Contracted Service Providers

The law also covers the prospective employees of contracted service providers holding contracts with school districts who will work in positions involving regular contact with students. Although the Legislature has not defined the phrase "regular contact with students," a cautious approach would dictate that it should be interpreted broadly. Any employees of a contractor used by a school district who would regularly have an opportunity to make physical contact with a student in performing their job responsibilities should be considered covered by the law.

It is imperative that school boards understand their obligations under this new legislation. Should you have any questions or concerns with respect to vetting prospective employees to protect students from child abuse and sexual misconduct, the attorneys at The Busch Law Group are available to assist you.