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Labor Law Bulletin

Starbucks Lawsuit Highlights Need to Review Employment Applications

A California Appeals Court recently sent a stern wake-up call to any employer using a "one size fits all" job application. A major employer was sued over a fairly typical and, in most states, lawful question in its employment application asking for the applicant's criminal conviction history. Because an unusual California law forbids inquiries into certain minor drug offenses, the court put a spotlight on the risk of not customizing employment applications to conform to individual state laws.

Many employers with nationwide operations utilize the same job application in all of their states of operation, including asking applicants whether they have been convicted of a crime. While such inquiries are permitted, California Labor Code Section 432.8 imposes an unusual requirement. Under the statute, employers cannot ask applicants to disclose certain convictions for marijuana-related misdemeanors that are more than two years old.

Other states have their own unique requirements. Illinois, for example, requires employers who ask about convictions on their employment applications to include language stating that applicants are not required to disclose expunged or sealed records. New York prohibits questions about prior convictions unless the violation has a direct bearing on the individual's fitness or ability to perform the job in question, or unless employment would present an unreasonable risk to property or to the safety and welfare of specific individuals or the general public. New York also prohibits any questions to applicants about juvenile arrests or convictions and sealed arrest records.

In *Starbucks Corporation v. Superior Court (Lords)*, Case No. G039700 (Dec. 10, 2008), three job applicants filed a class action lawsuit against Starbucks, contending that the convictions question on the company's standard application was illegal, and seeking over $26 million in damages. Notwithstanding that Starbucks—aware of the California law—had included a disclaimer for California applicants specifically identifying what marijuana-related misdemeanors need not be disclosed, the court still found problems with the job application. While the disclaimer language was fine, the court quibbled with its placement on the reverse side of the application among other state-specific disclaimers.

Although the court ultimately ruled against the plaintiffs, the decision sends a clear message to any multi-state employer using a "one size fits all" job application. With different states having their own rules on pre-employment inquiries, employers must make certain that their paper applications conform to the particular state laws where they hire employees. Further, the use of on-line employment applications creates legal risk if the application does not comply with the rules of each state where employees may be hired to work. Vedder Price can assist employers in reviewing and preparing legally compliant employment applications and pre-employment inquiries. For assistance, you may contact Bruce R. Alper (312-609-7890) or Christopher L. Nybo (312-609-7729) in Chicago, Alan M. Koral (212-407-7750) in New York or any Vedder Price attorney with whom you have worked.

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Annual Employment Law Seminar — SAVE THE DATE

Vedder Price will address the significance of the labor and employment law changes under the Obama Administration and the 111th Congress, along with other topics, at the firm's Spring Employment Law Conferences on the following dates:

May 6, 2009
Standard Club, Chicago, Illinois

May 7, 2009
Hotel Sofitel, Rosemont, Illinois

June 24, 2009
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About Vedder Price

Vedder Price P.C. is a national business-oriented law firm with over 260 attorneys in Chicago, New York and Washington, D.C. The firm combines broad, diversified legal experience with particular strengths in labor and employment law and litigation, employee benefits and executive compensation law, occupational safety and health, general litigation, corporate and business law, commercial finance, financial institutions, environmental law, securities, investment management, tax, real estate, intellectual property, estate planning and administration, health care, trade and professional association and not-for-profit law.

Questions or comments concerning THE LABOR LAW BULLETIN or its contents may be directed to the firm's Labor Practice Leader, Thomas M. Wilde (312-609-7821), the Managing Shareholder of the firm's New York office, Neal I. Korval (212-407-7780) or, in Washington, D.C., Theresa M. Peyton (202-312-3360).