

Important Amendment to Pennsylvania's Child Protective Services Law

Effective December 31, 2019, Pennsylvania's Child Protective Services Law ("CPSL") was again amended and the amendment removed the provisional period for employees who have direct contact with children to work for up to ninety (90) days prior to obtaining the required clearances. Accordingly, an employee who has direct contact with children may no longer begin that position until the employer has received proof of the three (3) clearances mandated by the state: (1) criminal history record obtained from the Pennsylvania State Police; (2) child abuse clearance obtained through the PA Department of Human Services; and (3) FBI criminal records check, which is obtained by submitting a full set of fingerprints for submission to the FBI.

The CPSL requires the above clearances from all employees in the state who have "direct contact with children" or who "are responsible for the direct welfare of a child." 23 Pa.C.S. §§ 6344(a)(4). The law defines "direct contact with children" as "[t]he care, supervision, guidance or control of children and routine interaction with children. "Child" is defined as an individual under the age of 18. 23 Pa.C.S. §6303.

Before the December 31, 2019 amendment, employers were permitted to allow employees who had direct contact with children to work on a conditional basis, for up to 90 days, until the background checks were received. These clearances must now be provided to the employer before the employee's first day of work. The only exception to the amendment is for a child day care center, group day-care home, or family child-care home where a request can be made to the Department of Human Services to grant a waiver for provisional hire which shall not exceed 45 days.

Significantly, this is the time of year when municipalities and other entities which operate summer recreation programs, camps, and swimming pools are making hiring decisions or at least interviewing prospective employees or volunteers for positions which will likely require direct contact with children. In light of this amendment to the CPSL, we strongly recommend that the mandated clearances be provided to the employer in advance of the individual's projected first day of work. In the event this is not possible, then an employee required to provide the clearances should not be permitted to actually begin working until their clearances have been provided to the employer.

As you may recall, it is a third degree misdemeanor for an employer (including administrators, supervisors or other persons responsible for employment decisions) to intentionally fail to require an applicant to submit the required information before the applicant's employment. We welcome you to contact labor counsel at our firm with any questions or concerns regarding the CPSL and this recent amendment.