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Health Care Employees

Pennsylvania's Ban on Ex-Offender Caregivers Overturned

BNA Snapshot

Peake v. Commonwealth, 2015 BL 430081, Pa. Commw. Ct., No. 216-MD-2015, 12/30/15

Holding: Lifetime ban on hiring people with convictions for certain violent crimes is struck down.

Impact: Employers must assess whether people with criminal records pose a risk.



By Jon Steingart

Jan. 5 — A Pennsylvania law that prohibits people who have ever been convicted of certain violent crimes from working as caregivers to older adults has been struck down by a unanimous state appellate court (*Peake v. Commonwealth*, 2015 BL 430081, Pa. Commw. Ct., No. 216-MD-2015, 12/30/15).

Employees who had worked as caregivers for more than a year at the time the law was enacted were grandfathered in, and allowed to keep their jobs. But the Pennsylvania Commonwealth Court said it found no rational basis to treat these employees as no threat to older adults while treating other ex-offenders as being incapable of rehabilitation.

The ruling “calls very directly into question the issue of lifetime bans on people not being able to work,” Sharon Dietrich, an attorney who represented the challengers, told Bloomberg BNA Jan. 5. “Suddenly a lot of people can hope to work in a lot of jobs.”

The challenge was brought by workers who said they can't get a job because of the law and by Resources for Human Development Inc., a care-providing nonprofit organization that said the law keeps it from hiring the people it wants.

The Older Adults Protective Services Act also includes a provision that bans employment of anyone who has been convicted within the past 10 years of less serious violent crimes, as well as drug and theft offenses. The plaintiffs didn't challenge that provision.

The law was challenged shortly after it was passed, and the Pennsylvania Supreme Court said it was unconstitutional as applied to the five plaintiffs in that case.

The law is “unconstitutional on its face” because of the Pennsylvania Supreme Court's reasoning, Judge Mary Hannah Leavitt wrote in the Dec. 30 opinion of the Commonwealth Court. The high court ruled the law didn't have “a real and substantial relationship” to the state's interest in protecting vulnerable adults, she said.

Ruling Applies Broadly

That means this ruling applies to everyone, said Peter LeVan, another one of the plaintiffs' attorneys. Dietrich said that employers “will still decide whether someone is a risk or not.” Now employers get to make that decision, not the state, she added.

It's harder to persuade a court to strike down a law “across the board” than it is to persuade a court to overturn it as applied to particular plaintiffs, LeVan told Bloomberg BNA Jan. 5. The strategy was to motivate the state legislature to fix the law in response to the earlier, narrow ruling, LeVan said. “We kept waiting and waiting and waiting for the General Assembly.

Eventually, we had to act," he said in reference to filing the current litigation.

The Pennsylvania Attorney General's office is "still in the process of reviewing the opinion and discussing it with the state agencies that we represent in this matter," and "no decision has been made regarding an appeal," Assistant Press Secretary Jeffrey Johnson told Bloomberg BNA by e-mail Jan. 5.

The LeVan Law Group LLC; Community Legal Services; Professor Seth Kreimer of the University of Pennsylvania Law School; and Kohn Swift & Graf PC represented the workers and the caregiving organization. Attorneys from the Pennsylvania Office of the Attorney General and the Aging, Health and Human Services departments represented the state.

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For More Information

Text of the ruling is available at http://www.bloomberglaw.com/public/document/Peake_v_Commonwealth_No_216_MD_2015_2015_BL_430081_Pa_Comm_w_Ct_De.