

Pennsylvania Legislature Passes Significant Amendments to Act 153 Clearance Requirements

The concerns of volunteer-based organizations and employers have reached the ears of state legislators. On July 1, 2015, the Pennsylvania legislature passed Act 15. Act 15 amends the Child Protective Services Law (the “Law”) to clarify the changes made to the Law by Act 153, a statute enacted in 2014 that imposed new requirements on certain employees and volunteers to obtain state and federal criminal background checks and child abuse clearances (collectively, the “clearances”). As a result of Act 153, employees and volunteers whose clearances reveal misconduct prohibited by the Law become disqualified from employment or volunteer service. The potential for disqualification makes these requirements a significant issue for entities across Pennsylvania.

Act 153 contained broad, sweeping language that created confusion around the specific employees and volunteers who must obtain the clearances. In particular, Act 153 did not clearly explain the amount of contact an individual must have with children for the clearance requirements to apply. Entities struggled to determine whether to require all of their volunteers or employees to obtain the required clearances – even those who virtually never come in contact with children.

Regulations from the state Department of Human Services were anticipated to help clarify the Law, but those regulations did not come. Instead, according to a memorandum written by sponsoring Representative Katharine Watson, “Staff from the House and Senate, together with the Department of Human Services, the Pennsylvania State Police, the Department of Education and the Administration have spent the last several months developing this amendatory legislation.” The memorandum explains that amendments to the Law were proposed in “an effort to clear up ambiguous aspects of the statute and to address concerns expressed by numerous volunteer-based organizations and other entities from across the Commonwealth that are affected by [Act 153].”

Representative Watson's memorandum further explains that amendments to the Law were proposed “to more clearly define who is subject to the [clearance] requirements, and, where possible, to make those requirements less onerous for adult volunteers who work with children. The objective is to strike a better balance between protecting children and not making the requirements for volunteers so onerous that the result is losing both volunteers and consequently programs that are beneficial to children.”

While Representative Watson's comments demonstrate that the amendments were initially proposed to provide relief to volunteer-based organizations, many of the changes to the Law made by Act 15 impact both volunteers and employees. Act 15 effectively narrows the scope of volunteers and employees required to obtain clearances pursuant to the Law. Further, the changes provide clarification on several issues about which our clients have inquired, including:

- Clarifying that the clearance requirements generally apply to employees and volunteers who provide child care services, work in schools, are responsible for a child's welfare, or have regular and repeated contact with children that is integral to their employment or volunteer responsibilities – not to administrative or other support personnel who do not have direct contact with children.
- Providing a specific exemption for school employees in institutions of higher education whose direct contact with children is limited to either prospective students visiting campus or students who are enrolled with the institution.
- Providing exemptions from certain clearance requirements for minors and exchange visitors if prerequisites are met.
- Providing certain circumstances under which fees for state background checks for volunteers can be waived.
- Lengthening the period of time for recertification of clearances from 36 months to 60 months.

These changes are just a few of the many amendments made to the Law that impact the scope of the clearance requirements and the procedures for obtaining and using the clearances. While the newly-adopted language is not crystal clear, it sheds additional light on an otherwise ambiguous section of the Law. Employers and volunteer-based organizations should review the changes to assess which employees and volunteers are now covered by the clearance requirements. Act 15 of 2015 is available for to view [HERE](#). The amendments take effect immediately.

More Information

The attorneys in Cohen & Grigsby's Labor and Employment Group can help you determine how these amendments may affect the volunteers and employees in your organization. Please contact any member of the Cohen & Grigsby Labor & Employment Group at 412.297.4900 if you have any questions regarding this or any other clearance or background check information. To receive future bulletins by e-mail, please send an e-mail to info@cohenlaw.com.

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