



DECEMBER 2014

ACT 153 OF 2014: CRIMINAL BACKGROUND CHECKS AND CHILD ABUSE CLEARANCES

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The Pennsylvania General Assembly amended the Child Protective Services Law (the CPSL) several times over the past year. The most recent changes were through Act 153 of 2014. Although there are sweeping changes made to the CPSL, even in just Act 153, this Alert only focuses on criminal background checks and child abuse clearances (collectively “clearances”).

As it relates to clearances, Act 153 requires all prospective employees, current employees, independent contractors and volunteers to get and renew criminal background checks and child abuse clearances on a three-year cycle.

Timing

To the extent that any school is now preparing to hire an employee, the requirement for that individual to submit clearances prior to hire is unchanged. Once clearances are submitted, that employee will need to submit new clearances every three years thereafter.

By contrast, most current school employees will have previously submitted child abuse clearance certification and criminal background reports from when they were hired. Although the old law did not require periodic renewal, the change through Act 153 applies to this group of employees, as well. Under the statute, this group is divided into two: those whose forms are dated after December 31, 2011; and those

with forms dated prior to that date. Those whose hire pre-dates any requirement for certification are in a third group that will be discussed below.

Because of the three-year renewal requirement, anyone with certifications dated prior to December 31, 2011, will be out of date on January 1, 2015. However, the statute gives those individuals one year to obtain new documents. Thus, their deadline to obtain new certifications (both the child abuse and criminal background report) is December 31, 2015.

However, for those whose certifications have not expired as of the December 31, 2014, effective date – i.e., anyone with certifications dated after December 31, 2011 – those will expire three years after the issue date of the documents. Since those documents would not have been issued all on the same day, the earliest date should be used for this determination.

Be aware: Those with clearances dated January 2012 will need to obtain new clearances by January 2015.

Now, on to the third group mentioned previously, which is also now clearly required to obtain clearances. The Pennsylvania School Boards Association (PSBA) takes the position that because the members of this group are currently compliant with the clearance requirements (they are grandfathered) and those “clearances” are more than three years old,

they fit into the group who has one year to comply with the renewal requirement. This is supposedly the Pennsylvania Department of Education's (PDE) opinion, as well.

At the same time, a literal reading of the statute seems to require that these individuals obtain their clearances by January 1, 2015.

We advise that you immediately notify those whose certifications will expire in January and February 2015 to apply for them right away.

Also, despite PSBA's and PDE's opinion, we also advise that you immediately contact those who have never obtained certifications previously and instruct them to do so now. Even if PDE provided direct assurances that such an employee may do so by the end of 2015, a change of administration may change PDE's opinion.

Where an employee, independent contractor or volunteer does not provide up-to-date documents by the deadline, the school must either:

- Remove the individual from any position that has "direct contact with children" (defined in the statute as "the care, supervision, guidance or control of children or routine interaction with children") until the renewed documents are submitted to the school, or
- Treat the employee as a "provisional employee" for up to 90 days. If all the prerequisites for that are followed, the employee still must not work alone with children and must work in the vicinity of a cleared employee.

Cost

The Act requiring renewal does not say who bears the cost for those renewed clearances. It simply indicates the employee has the duty to obtain them. But that was the case under the old statutory scheme, too, where the statute indicated the applicant had to obtain the clearances and did not address the costs. Nevertheless, the applicant was required to pay for those clearances. The language used in Act 153 mirrors that prior language, including the sole exception where the employer had to pay for the clearances. Therefore, the amended language relating to new certifications should be read as imposing the costs on the employee.

As it relates to those employees in a union, this may need to be bargained, but for now – and especially for those who need new clearances immediately – the employees should be instructed to pay for their clearances. Failure to do so could result in being removed from any position having "direct contact with children." It is highly likely a union may grieve this requirement.

Word of this change should be promptly circulated to ensure that every employee and independent contractor who has direct contact with children obtains updated clearances by the required deadline.

If you have any questions about the above, you may contact A. Kyle Berman at 610.397.7980 or any member of the Fox Rothschild Education Law Group.



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