Proskauer

New Georgia Law Helps Protect Employers from Negligent Hiring and Retention Claims

April 17, 2014

On April 13, 2014, Georgia's governor signed SB 365 to, in part, protect employers that hire and retain employees with criminal convictions. Under the new law, if the Department of Corrections issues a "Program and Treatment Completion Certificate" (the "Certificate")[1] or the State Board of Pardons and Paroles grants a pardon (as defined by applicable law) to an ex-offender, an employer will be presumed to have exercised due care in hiring, retaining, or otherwise engaging in activity with, the ex-offender who received the Certificate or pardon. This presumption may be rebutted by relevant evidence that extends beyond the scope of the Certificate or pardon and that was known or should have been known by the employer.

Takeaway

Georgia joins other states that have tried to protect employers from negligent hiring and retention claims. Last year, Texas passed a law that insulated employers from negligent hiring and supervision claims unless the employer knew or should have known that an employee had been convicted of a crime while performing duties substantially similar to those required in his or her current position, or had been convicted of one of several crimes enumerated in the statute. And, much like the new Georgia law, under Florida law, an employer is presumed *not* to have been negligent in hiring if it conducted a "background investigation"[2] that did not reasonably demonstrate the candidate's unsuitability for the position.

However, with more states and localities limiting employers from performing criminal background checks on applicants or employees, or from considering criminal records in personnel decisions, there is concern that a growing number of jurisdictions have failed to provide sufficient protection from negligent hiring and supervision claims arising from criminal conduct committed by employees. Employers therefore should continue to vet applicants carefully, consistent with the law in their jurisdictions.

[1] The new Georgia law tasks the Georgia Board of Corrections with promulgating rules and regulations to govern issuance of the Certificate. Those rules and regulations must specify eligibility considerations and requirements, and must take into account an offender's disciplinary record and any other factor the Board deems relevant to an individual's qualification for the Certificate. The law excludes any offender who was convicted of murder or felony murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, and/or aggravated sexual battery from eligibility for the Certificate.

[2] Under the Florida law, a background investigation may be satisfied with no more than a reference check or interview of the prospective employee (to offer a few examples).

Authors of this alert:

Katharine H. Parker, Daniel L. Saperstein and Kelly Anne Targett.