

## CLIENT ALERT

May 30, 2018

### NEW “PASS THE TRASH” LEGISLATION IMPOSES ADDITIONAL EMPLOYMENT BACKGROUND CHECKS ON SCHOOL DISTRICTS

Governor Phil Murphy recently signed P.L. 2018, c. 5, the “Pass the Trash” law, which requires public schools, charter schools, nonpublic schools, and any contract service providers holding a contract with a public, charter, or nonpublic school to investigate the employment history of all applicants for positions that involve regular contact with students regarding any past incidents of “child abuse” and/or “sexual misconduct” involving a child or student.

Under the legislation, “child abuse” is defined as “any conduct that falls under the purview and reporting requirements of P.L.1971, c. 437 (C.9:6-8.8 et seq.) and is directed toward or against a child or student, regardless of the age of the child or student.” “Sexual misconduct” encompasses “any verbal, nonverbal, written, or electronic communication, or any other act directed toward or with a student that is designed to establish a sexual relationship with the student, including a sexual invitation, dating or soliciting a date, engaging in sexual dialogue, making sexually suggestive comments, self-disclosure or physical exposure of a sexual or erotic nature, and any other sexual, indecent or erotic contact with a student.”

During the hiring process, P.L. 2018, c. 5 requires an applicant for a school position that involves regular contact with students to provide:

- The name, address, telephone number, and other relevant contact information of the applicant’s current employer, all former employers within the last twenty (20) years that were schools, and all former employers within the last twenty (20) years where s/he was employed in a position that involved direct contact with children;
- An authorization for his/her current/prior employer(s) to release related records concerning child abuse/sexual misconduct, which also releases the employer(s) from liability that may arise from the disclosure or release of the records;
- A written statement disclosing whether s/he has been subject to an investigation for alleged child abuse and/or sexual misconduct by any employer, State licensing agency, law enforcement agency, or the Department of Children and Families, unless the investigation resulted in finding that the allegations were false or the alleged incident of child abuse and/or sexual misconduct was not substantiated;

- A written statement disclosing whether s/he has been disciplined, discharged, non-renewed, asked to resign from employment, resigned from or otherwise separated from employment while allegations of child abuse and/or sexual misconduct were pending or being investigated; and
- A written statement disclosing whether s/he had a license or certificate suspended, surrendered or revoked while allegations of child abuse or sexual misconduct were pending or being investigated.

The legislation further requires employers to conduct a review of the applicant's employment history by contacting those employers listed by the applicant and requesting: (1) the dates of employment of the applicant; (2) a statement as to whether the applicant was the subject of any child abuse and/or sexual misconduct investigation by any employer, State licensing agency, law enforcement agency, or the Department of Children and Families, which was substantiated; (3) a statement as to whether the applicant was disciplined, discharged, non-renewed, asked to resign, resigned or separated from employment while allegations of child abuse and/or sexual misconduct were pending or under investigation; and (4) a statement as to whether the applicant has ever had a license, professional license, or certificate suspended, surrendered, or revoked while allegations of child abuse or sexual misconduct were pending or under investigation.

This review by employers may be conducted telephonically, electronically, or through written communications. **If the review is conducted telephonically, the prospective employer must document the information in writing.** Current and former employers are required to respond to the prospective employer's request within twenty (20) days after receiving the request for information. If a current/former employer fails to provide the information requested within the twenty (20) day timeframe, the applicant may be disqualified for employment. However, the prospective employer will not be liable for any claims brought by an applicant who is not offered employment or whose employment is terminated because of any information received by the prospective employer pursuant to the law, or because of the inability of the prospective employer to conduct a full review of the applicant's employment history. Additionally, if the applicant is offered employment or commences employment with the employer, the subsequent learning of an employee's child abuse and/or sexual misconduct is grounds for termination.

P.L. 2018, c. 5 is effective June 1, 2018. While the New Jersey Department of Education may be issuing forms for this purpose, our offices can provide template authorization and verification letters that can be used for your immediate hiring needs. Our office can also provide a standard, template disclosure and release form that can be incorporated into current applications.

Should you require any assistance during the application process under P.L. 2018, c. 5 and/or would like sample forms, please do not hesitate to contact our offices.