SCHENK ANNES TEPPER CAMPBELL

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Attorneys

Gerald L. Schenk
Andrew J. Annes
Robert D. Tepper
John W. Campbell, Jr.
Phillip N. Coover

Allison M. Adams
Diane M. Crary
Lisa Ann Murphy
Alex W. Norlander
Meghan E. White

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Don't Ask! Criminal Background Questions on Job Applications

By: Allison M. Adams and Phillip N. Coover

Effective January 1, 2015, a new Illinois law prohibits Illinois employers (with over 15 employees) from asking about an applicant's criminal background on the initial employment application. On November 5, 2014, the City of Chicago Council voted to apply the same restriction on all Chicago employers with less than 15 employees. Employers may only ask about the criminal record or history of an applicant once "the applicant has been determined qualified for the position" and notified that the applicant has been selected for an interview by the employer. This means that once an employer asks about the candidate's criminal background, the employer has already deemed the applicant qualified for the position. Once the applicant is deemed qualified, the employer should then be careful when deciding whether to hire an applicant during the interview process and be cognizant of discrimination laws pertaining to the hiring decision.

There is an exception for any employer that is required to exclude applicants with certain criminal convictions from employment due to federal or state law (like banks, schools, or financial institutions). The law also excludes employers which are required to hold bonds due to their fiduciary responsibilities and employers that employ individuals licensed under the Illinois Emergency Medical Services Act.

The Department of Labor is the sole avenue to address offending employers. To date, there is no private right of action for aggrieved applicants to sue offending employers under the new act. The first violation results in a written warning. A subsequent violation will have a penalty of $500, and any further violations may result in a penalty of up to $1,500 per month that passes without compliance. By enacting this law, Illinois joins several other states, including Massachusetts, Minnesota, Rhode Island, Hawaii, and several large cities, with similar "ban the box" laws in place.

To discuss these issues, please contact Phillip N. Coover at 312.554.3103 or pcoover@satcltd.com.

FLYER ALERT: New Illinois Pregnancy Accommodation Law

By: Andrew J. Annes and Allison M. Adams

Effective January 1, 2015, all Illinois employers are required to make certain accommodations for pregnant and post-pregnancy employees. The amendment to the Illinois Human Rights Act comes only a few months after the Equal Employment Opportunity Commission (EEOC) released the first detailed guidelines in thirty years on pregnancy discrimination. The new law and guidelines reflect the increasing number of employee complaints regarding pregnancy discrimination in treatment, hiring, promotions, and accommodations. Pregnancy related complaints to the EEOC rose 46% from 1997 to 2011, including an increase in employer fines from $5.6 million in 1997, to $17.2 million paid by employers in 2011.

The Illinois law requires employers to provide reasonable accommodations for both common conditions related to pregnancy and childbirth, as well as complications related to pregnancy or childbirth. The law outlines several examples of what will be deemed reasonable accommodations, including increased restroom and water breaks, leave or schedule changes for doctor's appointments, providing a chair for resting, leave to recover from childbirth, and providing a private (non-bathroom) space for expressing milk. An employer would be required to provide those accommodations upon a pregnant employee's request unless it can show an undue hardship to the company.

As part of the new employer duties, employers are required to post, in the workplace, a certain informational notice prepared by the Illinois Department of Human Rights. Further, Illinois employers must update any employee handbooks to comply with the new protections.

The legal protections from discrimination for pregnant or post-partum employees continue to evolve. In addition to the Illinois amendment and the EEOC guidelines, the U.S. Supreme Court has taken argument, and will soon issue an opinion as to whether an employer is required to provide reasonable accommodations to pregnant employees, in the pending Young v. United Parcel Service case.

If you would like to discuss these issues, please contact Andrew J. Annes at (312) 554-3110 or aannes@satcltd.com

Illinois Updates Health Care Power of Attorney

By: Gerald L. Schenk and Allison M. Adams

A new Illinois statutory Health Care Power of Attorney became effective on January 1, 2015. A health care power of attorney generally provides a designated person (the "agent") with the power to make medical and health care decisions on behalf of the person signing the power of attorney (the "principal") when the principal is incapable of making those decisions. The new Power of Attorney provides additional powers to the agent and attempts to simplify the form with plain language. The new form increases the instances in which the agent may make "end of life" care decisions for the principal, which includes the extent of life preserving measures they would desire if in a comatose or vegetative state. Previously, an agent could only stop treatment of the principal if the principal had a terminal condition. The new form permits those same decisions to remove care in more comprehensive situations, to include when the principal does not have a terminal condition but has an inability to think, communicate or experience surroundings. Finally, the new power specifically includes the authority to make decisions regarding the principal's burial plans.

All of the new changes reinforce the necessity for any principal to carefully consider and very clearly communicate his or her desires for all of these types of sensitive and difficult decisions. Any previously executed Health Care Power of Attorney remains effective, however, if you previously executed a Health Care Power of Attorney, you may want to review and ensure it still meets with your wishes.

If you would like to discuss these issues, please contact Gerald L. Schenk at (312) 554-3111.

Flying Blind: Commercial Drone Update

By: Alex W. Norlander and John W. Campbell, Jr.

Two significant events have taken place in the commercial drone industry since we circulated our Fall 2014 Newsletter article entitled: Uncertainty in the Air: Use of Drones for Commercial Purposes. First, the National Transportation Safety Board ("NTSB") issued a decision finding that unmanned aircraft systems ("UAS") (i.e. drones) do qualify as aircraft subject

to regulation by the Federal Aviation Administration ("FAA"). The NTSB concluded that UAS fit within the FAA's definition of an "aircraft", which the FAA has authority to regulate. This ruling makes it clear that FAA regulations apply to the operation of commercial drones.

Second, on January 6, 2015, the FAA granted two regulatory exemptions for commercial drone operations, including an exemption in the real estate industry. The regulatory exemption authorizes a real estate company in Arizona to employ drones to photograph and record videos of properties for the purpose of enhancing real estate listings. The FAA had previously granted 12 exemptions to entities in other industries, such as the movie industry.

The FAA has received a total of 214 requests for exemptions from commercial entities seeking permission to operate drones for various commercial purposes. The commercial drone industry continues to advance while it waits for the FAA to develop regulations for the integration of drones into U.S. airspace, which Congress mandated in 2012. Congress set September 2015 as a deadline for the integration, but the FAA is expected to miss that target. Many companies remain in a holding pattern as a result and must wait until the FAA acts before moving forward with grander drone plans.

If you have any questions regarding these issues, please contact John W. Campbell, Jr. at (312) 554-3126 or jcampbell@satcltd.com.