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Former Criminal to Prospective Employee - *Tips for Understanding* *Ohio Senate Bill 337 and CQEs in the Hiring Process*

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Ohio Senate Bill 337 (SB 337) took effect on September 29, 2012, and enacted several reforms to Ohio's criminal justice system. One well-publicized reform was the expansion of an individual's eligibility to expunge or seal criminal convictions. Another less publicized reform actually grants employers immunity from negligent hiring claims and serves as evidence of due care against other types of negligence claims.

Prior to SB 337, an individual could only expunge one prior conviction, and even then only after certain time periods had passed and for certain types of criminal convictions (DUI's, crimes of violence, and drug offenses are examples of some crimes that are non-expungeable). SB 337 expanded this to allow an individual to expunge or seal records of convictions for either:

- One felony conviction; or
- Two separate misdemeanor convictions (if not for the same offense), or one felony and one misdemeanor conviction.

This reform essentially gives individuals the chance to expunge records of two convictions, so long as they are not both separate felony convictions.

However, even this expansion of expungement eligibility still leaves a large number of individuals ineligible. Part of SB 337 became R.C. §2953.25 which creates something called a **Certificate of Qualification for Employment**, or a "CQE" for short. In essence, a CQE acts like a seal of approval from a judge and provides some protections for employers who hire former convicts. The purpose of this program is to remove "collateral sanctions" from convictions, such as disqualification from obtaining certain professional or occupational licenses or just to improve a person's chances of getting a job with a criminal record.

An individual can apply for a CQE through the Ohio Department of Corrections (if previously incarcerated) or through the Common Pleas Court where they currently reside (if not previously

incarcerated). This certificate does not accomplish what an expungement does, but it can help remove barriers for a person convicted of a felony or misdemeanor in obtaining a professional license or a job.

Qualifying for a CQE is not easy and involves an intensive review by state rehabilitation officials, judges, and probation departments as well as documentation of an applicant's criminal history, work history, education, family situation, and references. A CQE will not be issued to individuals with certain types of convictions seeking employment in fields related to those crimes, such as someone convicted of check fraud applying for work in the financial services sector. CQEs are revoked for subsequent convictions as well.

For employers, the most important feature of a CQE is that it provides immunity to employers for negligent hiring claims **IF** the employer was aware of the certificate at the time of the alleged negligence. It can also be introduced as evidence of an employer's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the CQE was issued, **IF** the employer knew of the CQE at the time of the alleged negligence or other fault. However, what happens if after being hired, the employee subsequently demonstrates dangerousness or is convicted of or pleads guilty to a felony, and the employer retains the individual as an employee? In this instance, the employer may be held liable in a civil action that is based on or relates to the retention of the individual as an employee, but only if it is proved by a preponderance of the evidence that the person having hiring and firing responsibility for the employer:

- Had actual knowledge that the employee was dangerous; or
- Had been convicted of or pleaded guilty to the felony; and
- Was willful in retaining the individual as an employee after the demonstration of dangerousness or the conviction or guilty plea of which the person has actual knowledge.

Applications for CQEs are on the rise. Given the immunity that a CQE grants employers, there may be an increase in hiring job candidates with minor criminal backgrounds that were previously excluded from consideration. When hiring applicants with known criminal convictions, employers should request the CQEs and keep them on file due to the important immunity they can provide to negligent hiring claims, but they can also serve as admissible evidence against multiple types of claims involving negligence related to the employee.

As this is an evolving area of employment law, any questions regarding SB 337 and/or CQEs should be directed to your Weston Hurd employment attorney.



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