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Changes to Act 24 pertaining to People Working in Schools Will Affect Many Contractors

This article previously appeared in the MABX Construx Magazine in its May 2012 edition. With the closing of the MABX in 2015, the link to the article became inactive so the article has been reformatted for this website.

The rash of alleged misconduct and abuse by some public school teachers and coaches against students along with discoveries that some of the culprits had undetected criminal histories, has resulted in a stiffening of the law requiring background checks for people working in schools. The changes to the law increase the types of criminal convictions that bar an employee from working in schools. The intent of the changes are to prevent as many people with criminal records as possible from working in schools in any capacity. The changes to the law went into effect in late fall 2011.

The changes to Act 24 expand the list of crimes that disqualify individuals from working in schools and they lengthen the period of the disqualification. Also, Act 24 now requires that a person who is working in a school notify the school upon arrest or conviction for certain crimes. For contractors and subcontractors that work in schools, these changes are important because some employees that were previously permitted to work in schools are now barred.

Under the prior version of the law, a person convicted of certain crimes, generally crimes of violence or sex crimes, could not work in a school unless the conviction was more than five (5) years ago. Now, however, any conviction of one of the listed offenses will result in a permanent bar from school employment. Just as importantly, the number of crimes that disqualify an employee from working in school has increased. Now, crimes such as a felony drug conviction, luring a child into a motor vehicle, unlawful contact with minors and solicitation of minors to traffic drugs, among others, have been added to the list of prohibited offenses. Consequently, some workers who were permitted to work in schools under the old law are no longer permitted to do so. For example, felony drug convictions are not that rare and they now permanently disqualify an employee from working at a school. Another important change is that anyone with a felony conviction of any kind (whether drug-related or not) within the last ten (10) years is now barred from working in schools. A first degree misdemeanor conviction within the last five (5) years also disqualifies an employee from working in a school, as do most repeat DUI convictions. Under the amendments, a worker is now barred from working in schools if:

- He/she has been convicted of any felony within the last ten (10) years
- He/she has been convicted of a first-degree misdemeanor within the last five (5) years
- He/she has been convicted of a second offense for driving under the influence (DUI) where it was a first degree misdemeanor within the last three (3) years

Taken together, these amendments significantly broaden the circumstances under which an individual with a criminal record will be disqualified from



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working in schools. In particular, the addition of second offense DUI convictions is likely to affect a fair number of workers. Contractors must be very careful because previously eligible employees may no longer be eligible. All employees, regardless of length of service or previous school employment, must submit to a criminal background check administered by the Pennsylvania Department of Education.

Owners and managers of construction businesses need to be proactive to find out if any of their employees are disqualified from school work under the changes. Prudent steps for employers to take include requiring applicants and existing employees to submit to a criminal background check as a condition of hire or continued employment. Having a key employee fail the Department of Education's background check requiring removal in the middle of a project can be very disruptive. To avoid this, take steps now to find out which employees cannot be assigned to school work.

One issue that remains unclear is whether Act 24's requirements and restrictions apply to workers on new construction school projects. Act 24 expressly indicates that it applies to anyone that has "*contact with children*" and it has specifically been applied to construction workers. However, It is not clear whether these rules apply to new construction because there will typically be no contact with children if the school is brand new (at least until it is occupied). In our experience, most school officials are requiring compliance even on new schools and our clients have preferred to comply with the requirements rather than risk alienating school officials by challenging their right to require the background checks. These changes to Act 24 are significant and will likely affect all contractors that work in public and private schools. Talk to your counsel to make sure you are not caught by surprise.