

California Employers - Beware of Megan's Law Searches

Any citizen with an Internet connection may now access California's Megan's Law database with the names and in some cases the address, of the state's more than 63,000 registered sex offenders. The legislatively stated intent of the law is one of protection, not of further punishment of those convicted of these crimes: "This policy of authorizing the release of necessary and relevant information about serious and high-risk sex offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive."

Employers should be aware that the statute expressly forbids adverse employment actions based upon information gained from the Megan's Law database. This includes pre-employment and post-hiring decisions. Such use can result in liability for damages, attorney's fees and a civil fine. The new law does not however, prohibit employment actions based upon properly conducted, conventional background screening methods. The statutory section prohibiting use of the Megan's Law web site as a basis for adverse employment decisions does not apply to employers required or authorized to collect criminal information from the State Department of Justice.

Generally, employers should be able to gather a criminal history and thus alleviate any need to consult the Megan's Law database, through the hiring process by: 1) asking if a person has been convicted of a felony on employment applications; 2) with follow-up questions regarding felony convictions during an interview; 3) criminal searches properly conducted during background screening (keeping in mind that felonies older than seven years are omitted).

If an employer learns of an employee's sexual offense, either directly from a Megan's Law data search or indirectly through the Megan's Law search of someone else, the employer should evaluate any possible public risk continued employment might present. For example, is the registered offender working with children or at-risk adults? How long has the person been employed and have they exhibited characteristics of successful rehabilitation? Can a case for public protection be made once the person is either not hired or is terminated? An employer should not take any adverse employment action against an employee who is a registered sex offender, if the information regarding the offense is gained through the Megan's Law database, without first consulting an attorney that specializes in employment matters.