

# **NEWS Utah Labor Commission**

## **FOR IMMEDIATE RELEASE**

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### **Utah Labor Commission clarifies changes in Employment Selection Procedures Act**

SALT LAKE CITY, June 11, 2009 –During the last legislative session, the Utah state legislature passed the Employment Selection Procedures Act, which became effective May 12, 2009. This law, which applies only to companies with 15 or more employees, was subsequently amended in the Special Session in mid-May to make some key changes.

The law is designed to protect the privacy of job applicants, and to safeguard the information that employers collect during the application process. Because this new law makes fundamental changes to when an employer may request certain information during the application process, and how long it may keep the information once it has been obtained, it is critical for employers to understand it.

#### **When an Employer May Request Protected Information**

The law prohibits an employer from requesting the following information from a job applicant before the applicant is offered a position: (1) social security number; (2) date of birth; and (3) driver license number. However, the law allows an employer to request the information before an offer is made in the following 6 situations:

1. To obtain a criminal background check;
2. To obtain a credit history;
3. To obtain a driving record from the driver license division;
4. To conduct a review of its internal records to determine whether the applicant was previously employed by the employer;
5. To conduct a review of its internal records to determine whether the applicant previously applied with the employer; or
6. To participate in a government service, benefit or program which requires that the information is collected on or before the day on which the job offer is made.

The employer must request the information from every applicant applying for the position and the applicant must give prior consent before the information is obtained. If the employer requests the information under one of these exemptions, it must actually take the action for which it is seeking the information. For example, if the employer requests the information so it can perform a criminal background check, it must actually conduct the background check for that particular applicant. Further, an employer which properly obtains the information may not use it for any purpose other than to determine whether it will hire the applicant. In other words, it may not use the information for any marketing or profiling purposes, nor may it disclose the information to any other outside party, other than the government or as otherwise required by law.

#### **Document Retention**

The law requires that an employer who requests the otherwise protected information maintain a specific policy regarding document retention, disposition, access and confidentiality of the information, and

may not retain the information for more than two years after the applicant provides the information or the employer decides not to hire the applicant.

#### Enforcement

Applicants who believe that an employer has violated the law may file a claim with the Utah Antidiscrimination & Labor Division of the Utah Labor Commission. Once it receives a complaint, the Division will open an informal adjudication proceeding. If the Division finds that a violation has occurred, it may order the employer to cease and desist the action, or pay a fine to the Division of up to \$500 per violation, regardless of the number of applicants affected by the violation. The applicant who alleges the violation is not entitled to recover any damages.

The Division is in the process of drafting administrative rules regarding the complaint and investigatory processes it will follow. These rules will be posted for public comment and will be subject to an open meeting where members of the public may also make comment. Please see the Division's website for updates ([www.laborcommission.utah.gov](http://www.laborcommission.utah.gov)). You may also contact Heather Morrison, the Division Director, at [hmorrison@utah.gov](mailto:hmorrison@utah.gov) if you have any questions.

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