

## EMPLOYMENT LAW UPDATE

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***Moran v. Murtaugh, Miller, Meyer & Nelson, LLP (01/31/2005) 05 C.D.O.S. 964***

***An Employer Who Conducts Its Own Background Check Of An Employee Must Deliver The Results Of The Check To The Employee Within A Reasonable Time.***

*By Jason A. Geller and Juan C. Araneda*

Murtaugh, Miller, Meyer & Nelson, LLP hired Gene Moran as a paralegal on April 2, 2003. On April 3, 2003, after a discussion with Moran, one of Murtaugh's associates conducted a computerized legal database search that produced three unpublished appellate opinions in which Moran was a party. The three opinions revealed that Moran had suffered felony convictions. On April 8, 2003, the associate anonymously left printouts of the cases on the chairs of two Murtaugh partners, who forwarded them to the Firm's two managing partners. The next day, April 9, 2004, the Firm's managing partners met with Moran to discuss whether he had ever been convicted of a felony and, when he answered affirmatively, they requested and received his resignation.

On April 19, 2003, Moran sent a letter to Murtaugh citing the Investigative Consumer Reporting Agencies Act (Civil Code section 1786 et seq.), requesting "a copy of the sourced public record information that the adverse decision was based upon, and the date it was accessed." On April 21, 2003,

Murtaugh mailed Moran copies of the cases its associate had discovered.

Moran filed suit against Murtaugh, claiming, among other things, violation of Civil Code section 1786.53, which governs the disclosure of background checks by employers. Subdivision (a) of Civil Code section 1786.53 provides broadly that, "[a]ny person who collects, assembles, evaluates, compiles, reports, transmits, transfers, or communicates information on a consumer's character, general reputation, personnel characteristics, or mode of living, for employment purposes, which are matters of public record, and does not use the services of an investigative consumer reporting agency, shall provide that information to the consumer pursuant to subdivision (b)."

The purpose of Civil Code section 1786.53 is "to provide California consumers with additional protections against identity theft." The section aids the discovery of identity theft by requiring employers to provide prospective employees who are the

subjects of background checks with copies of public records in the report, that are, “records documenting an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment.” CC §1753.53 (a)(3).

The disclosure requirements are even broader for employers who conduct their own background checks. Disclosure in such instances is not predicated on an adverse employment action. Rather, an employer who “does not use the services of an investigative consumer reporting agency” but through other sources or its own efforts “collects, assembles, evaluates, compiles, reports, transmits, transfers or communicates” background check information or receives it in this manner, generally must provide a copy of the subject of the background check “within seven days after receipt of the information...” CC 1786.53 (b)(1).

Moran complained that he did not receive copies of documents within the

seven-day timeframe, whether measured from the time Murtaugh’s associate discovered the opinions, or from the date the managing partners asked Moran to resign.

However, the Court of Appeal for the 4th District noted that subdivisions (b)(3) and (b)(4) of Section 1786.53 suspend the seven-day requirement when the employer is investigating “suspicion of wrongdoing or misconduct” by the employee. Moreover, the statute does not require an elaborate investigation to defer disclosure. Thus, an employer may choose to withhold the background check results temporarily to confront the employee with the information.

Therefore, the Court held that under Section 1786.53, an employer must furnish copies of any public record uncovered in a background check within a reasonable time after an investigation concludes, according to the circumstances of each case.

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