

UPDATED - Provisional Hiring is Once Again Permitted While a New Hire Waits for Certain CPSL Background Clearances

By: Michael A. Palombo, Esq. and Julie A. Aquino, Esq.

Since 2015, the Child Protective Services Law (“CPSL”) has required background clearances for employees and volunteers who have direct contact with children under eighteen years of age. The precise rules regarding these clearances have changed more than once since 2015. The most recent modification, the result of House Bill No. 764 (Act 12 of 2022), allows employers to provisionally hire an employee for up to forty-five (45) days while the employee is waiting on receipt of either the completed FBI clearance or the Pennsylvania State Police clearance, if certain conditions are met. In order to allow a new hire who will have direct contact with children to begin work while waiting for the required clearances, the following conditions must be met:

1. The applicant has applied for all three required clearances and has provided a copy of the completed request forms to the employer;
2. The applicant has received the results of the Pennsylvania Child Abuse History clearance, and either one of the FBI or Pennsylvania State Police (“PSP”) clearances, and has submitted the results to the employer;
3. The employer has no knowledge of information that would otherwise disqualify the applicant under the CPSL;
4. The applicant swears or affirms in writing they have not been convicted of a disqualifying offense under the CPSL and has not been named in the statewide database as a perpetrator of a founded report of child abuse committed within the preceding five (5) years;
5. The employer requires that the applicant not be permitted to work alone with children and requires the applicant to work in the immediate vicinity of a permanent employee;
6. The employer immediately terminates the applicant if the background checks reveal that the applicant is disqualified from employment.

This provisional hiring amendment is effective immediately. Because the employee must have the Child Abuse History Clearance and either one of the FBI or PSP clearances in order to be provisionally hired, the primary impact of the amendment is to allow forty-five (45) days for the employee to obtain the FBI clearance, which typically takes longer to process than the PSP clearance. Of course, some new hires may already have a transferrable FBI clearance from another employer and minors who have resided in Pennsylvania during the entire ten (10) year period prior to their start date are exempt from the FBI clearance requirement.

Employers wanting to use the forty-five (45) day provisional period will need to have the employee review and sign a sworn statement attesting that they have not been convicted of any disqualifying offense under the CPSL. The attorneys at Campbell Durrant can provide you with an affidavit form to meet this requirement. This provisional period does not apply to volunteers that may be required to have clearances to participate in municipal operated events. CPSL

clearances must be renewed every sixty (60) months and are transferrable between employers, but are not transferable from volunteer service to employment. Campbell Durrant attorneys can answer any questions that you may have about regarding these clearances.