

Applicant Filed for Bankruptcy: Can You Refuse to Hire Him?

Have you ever thought of not hiring an applicant because he or she had previously declared bankruptcy? Maybe you thought that was discriminatory. But a court last week said, "Don't worry." Private employers won't violate the U.S. Bankruptcy Code if they refuse to hire. But firing based on bankruptcy status is another story ...

Case in Point: Dean Rea was offered a job as an IT project manager at a Pennsylvania company, pending a background check. However, the check revealed that Rea had filed for bankruptcy seven years prior. Based on this new information, the company withdrew its offer.

Rea sued for discrimination under the Bankruptcy Code, claiming it prohibits employers from discriminating based on a person's previous bankruptcy filing. The relevant section of the code (11 U.S.C. § 525(b)) says, "No private employer may terminate the employment of, or discriminate with respect to employment against, an individual who is or has been a debtor under this title."

The company argued that courts have consistently ruled that the Bankruptcy Code does NOT apply to discrimination in hiring, but only to termination activities.

Ruling: The U.S. Court of Appeals for the 3rd Circuit sided with the company. It dismissed the case, saying the majority of federal courts that have ruled on this issue have said the section doesn't apply to hiring-discrimination claims.

In upholding a lower court ruling, the appeals court said, "The district court properly declined Rea's request to read the phrase 'discrimination with respect to employment' in § 525(b) as broad enough to encompass discrimination in the denial of employment ... Congress did not so provide. Neither will we." ([*Rea v. Federated Investors*](#), 3d Cir., 12/15/10)

Note: This ruling applies to private employers. Another section of the Bankruptcy Code says government employers are prohibited from discriminating in hiring based on a person's previous bankruptcy filing.

3 Lessons Learned...Without Going to Court

1. Use a third party for reference checks. This strategy is a best practice to receive an objective background report.

2. No discrimination in termination. The Bankruptcy Code prohibits discrimination based on bankruptcy filing when it comes to firing an employee.

3. Remember the public/private divide. The Bankruptcy Code has different standards for private employers versus government employers.