



Employment Auditor's Notepad

EDD WILL DENY BENEFITS TO CLAIMANTS NOT AUTHORIZED TO WORK IN THE U.S.

When the California Employment Development Department (“EDD”) receives a new claim for unemployment benefits, they first verify the Social Security number to determine if it is valid and assigned to that claimant. If there is any discrepancy, the EDD sends a letter to the employer, requesting clarification.

As part of the eligibility for unemployment, the EDD requires that the claimant is “ready and willing to immediately accept new employment.” Therefore, if the claimant does not have the legal right to work in the U.S., then the claimant is not eligible for unemployment benefits.

If an employer reduces the hours of an existing employee, and the employee then files a claim for partial benefits, the EDD will go through the same process. If the EDD then sends a Social Security mismatch letter to the employer, this functions as constructive notice to the employer that the individual may not be work authorized.

This would require the employer to take further investigative action. For guidance on handling mis-match letters, see www.justice.gov/crt/about/osc/htm/SSA.php

Refusing to Hire an Applicant Who Fails a Drug Test is Not an ADA Violation

An employer’s decision not to hire candidates who fail pre-employment drug tests is a common basis for a lawsuit. The candidates who sue often claim that their drug use is tied to a disability, and therefore is protected by the law. Within the state courts, the California Supreme Court has upheld an employer’s right to refuse employment to applicants who test positive for marijuana, even where the employee claims medical marijuana use. Recently, the Ninth Circuit ruled in a similar fashion and upheld an employer’s right to deny employment to an applicant who failed a drug test, even when the applicant claimed protection under the Americans with Disabilities Act (“ADA”).

In *Lopez v. Pacific Maritime Association*, the Ninth Circuit held that an employer’s “one strike” rule that permanently bars employment for any applicant who fails a drug test, did not violate the ADA. The plaintiff applied for employment in 1997; at that time, he was addicted to drugs and alcohol and failed the drug test, thereby disqualifying him from employment with that employer. Several years after that, when plaintiff was sober, he reapplied for employment in the same position. His application was rejected because the employer used the one strike rule, where applicants who fail even one drug test are permanently disqualified from employment. The plaintiff sued, claiming the employer violated the ADA by discriminating against him based upon his protected status as a rehabilitated drug addict. The court dismissed his claim and ruled that there was no ADA violation. The employer’s policy treated all test failures the same, whether the failure was due to a disability or recreational drug use. The employer did not even know of plaintiff’s disability at the time of the first drug test or his rehabilitated status at the time of the second drug test, nor did the employer know about this when it rejected his application. As a result, the employer could not have discriminated against the plaintiff on this basis.

This ruling, combined with the prior California Supreme Court opinion, allows California employers to screen and reject job candidates without facing the risk of violating state or federal law. However, employers should remember that drug testing policies that bar employment based upon test failures should be clear-cut policies, and carried out as such.

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