
community BANKER

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Welcome to the January/February issue of the COMMUNITY BANKERS' ADVISOR.

The ADVISOR is prepared by attorneys at Olson & Burns P.C. to provide information pertaining to legal developments affecting the field of banking. In order to accomplish this objective, we welcome any comments our readers have regarding the content and format of this publication. Please address your comments to:

Community Bankers' Advisor
c/o Olson & Burns P.C.
P.O. Box 1180
Minot, ND 58702-1180

olsonpc@minotlaw.com

Also, visit our web site at:
www.minotlaw.com

The attorneys at Olson & Burns represent a wide range of clients in the financial and commercial areas. Our attorneys represent more than 30 banks throughout North Dakota.

PUT YOUR POLICIES IN WRITING

A company dodged a bullet when the 8th Circuit Court of Appeals dismissed a race discrimination case based on the employer's unwritten policy to not hire applicants with criminal records. Con-Way Freight had an unwritten but established policy of not hiring applicants with theft-related convictions. Roberta Hollins applied for a job at the Missouri transportation company, and admitted on her application that she had two misdemeanor shoplifting convictions. Based on those convictions, Con-Way did not hire Hollins and a white male was hired instead. The Equal Employment Opportunity Commission filed a race bias lawsuit against the company, claiming that Con-Way had discriminated against her based on her race. A regional manager's comment that hiring Hollins would be "opening up a can of worms" and that the service center manager "probably didn't want to go that route" was among several factors that the EEOC used to show discrimination. The EEOC also argued that Con-Way could not rely on the no-criminal-record policy because it was unwritten.

In response, Con-Way argued that race wasn't an issue because it had long followed its policy - though it was not in writing - that rejected job applicants with *any* theft-related convictions. The EEOC claimed that because that policy was not written, it couldn't use that defense in court.



OLSON & BURNS P.C.

17 FIRST AVENUE S.E. • P.O. BOX 1180 • MINOT, NORTH DAKOTA 58702-1180
TELEPHONE (701) 839-1740 • FACSIMILE (701) 838-5315 • E-MAIL: olsonpc@minotlaw.com

The 8th Circuit rejected this argument, stating that there was sufficient evidence that the policy existed and was uniformly enforced because Con-Way had disqualified 28 applicants in the previous 18-month period due to their theft-related convictions. Moreover, the company could show that no employees currently working at the customer service center had a record of convictions related to theft. The Court concluded that because of Con-Way's policy of automatically disqualifying applicants with theft-related convictions, Hollins would have been rejected *regardless* of her race and dismissed the case.

Why does this matter to you? (a) Put your hiring policies in writing. Con-Way was lucky in this case that the unwritten policy was being applied consistently. Had there been even one employee with a shoplifting conviction working in the customer service center, this might have been extremely expensive (and embarrassing) for the company. (b) Check that you don't have unwritten policies. If it's not written down, there is a higher risk that something (or someone) might slip through the cracks. (c) Train employees on all policies to increase compliance and reduce risk.

(EEOC v. Con-Way Freight Inc., 09-2926-2930 (8th Cir. Sept. 22, 2010)).

FDIC Releases Community Banking Study, Supervisory Initiatives

The Federal Deposit Insurance Corporation (FDIC) released the results of a study of community banking in the United States, as well as a series of supervisory and rulemaking measures relating to community banks, as the outcome of its year-long Community Banking Initiative (CBI).

The FDIC announced the CBI in the fall of 2011 to further the understanding of the evolution of community banks during the past 25

years, devoting comprehensive research and analysis to the current challenges and opportunities for community banks, and implications for the future of community banking. This effort was complemented by outreach and engagement with community bankers across the country.

The FDIC launched the CBI in February 2012 with a national conference on community banking. Following the conference, the FDIC hosted roundtable meetings between community bankers and senior FDIC officials in each of the FDIC's six regions. In addition, the FDIC's Divisions of Risk Management Supervision (RMS) and Depositor and Consumer Protection (DCP) undertook comprehensive reviews of their examination and rulemaking processes to identify opportunities to make these processes more efficient and effective, while maintaining supervisory standards.

The Community Banking Study was a data-driven effort to identify and explore issues and questions about community banks. The study is designed to be foundational, providing a platform for future research and analysis by the FDIC and other interested parties. Key areas that the study explores include the definition of a community bank, structural changes among community and non-community banks, the geography of community banking, the performance of community banks compared to non-community banks, the performance of community bank lending specialty groups, and capital formation at community banks.

The study, national conference, and regional roundtables helped to inform and guide the FDIC's comprehensive reviews of the examination and rulemaking process. As first outlined at the FDIC's Advisory Committee on Community Banking on November 8, 2012, the FDIC has taken actions to address the examination and rulemaking review findings in the following areas: general examination issues, communications, regulations, and technical assistance.

FDIC Chairman Martin Gruenberg said, "Today's release is an important step to better understand and

respond to the challenges community banks face in the financial marketplace. This will be an ongoing effort. We will continue to look for other opportunities to enhance our research and analysis as well as identify other steps to improve the examination and rulemaking process for community banks, while maintaining our supervisory standards."

The initial findings can be found at www.fdic.gov/cbi/

(Released December 18, 2012)

YOU ARE ASKING

Q: Do you have a simple Affidavit we can use for when a customer claims that a check was altered?

A: See below for a sample you can adapt for your use.

Affidavit of Check Alteration

I, _____, hereby state under the penalties of perjury that the undersigned is the maker of Check Number _____ drawn on account number _____ in the name of _____ at {Bank name}.

That said check was originally drawn in the amount of \$ _____, payable to _____;

That said check has been altered by a person or persons unknown to me to [check and complete one or both]:

___ change the amount to \$ _____
 ___ change the payee(s) to _____;

and further, that I received no benefit from said alteration.

Signed this ___ day of _____, 20 ____

STATE OF NORTH DAKOTA)
) ss.
 COUNTY OF _____)

On this ___ day of _____, 20__, before me, a Notary Public in and for said county and state, personally appeared _____, known to me to be the person who is described in and who executed the within instrument and acknowledged to me that he/she executed the same.

 Notary Public
 For the State of North Dakota
 My Commission Expires: _____

The Helicopter Parent of Your New Employee

We shouldn't even have to have this discussion, but it's out there. You've likely heard of the "helicopter parent," the overprotective moms or dads who immerse themselves in *every* part of their children's lives, including, it has been reported, on the job. Parents are now getting involved in different work issues, such as application inquiries, benefits enrollment, work disputes, pay negotiations, performance reviews, and calling in sick on the (adult) child's behalf. Parents sometimes are even the first to report wrongdoing such as allegations of sexual harassment. If you find that your employee comes with a helicopter parent, you need to set clear boundaries from the get-go to prevent workplace disruption. What this means is that someone has to educate the new employee (and perhaps dad) about professionalism in the workplace. If the employee is a minor, such as the high school student working in the summer or if the parent refuses to back off, you might consider involving the parent, in a limited and appropriate way. One study showed that when parents are actively engaged in addressing a workplace problem, they often advise the child/employee not to take drastic measures. However, when parents are excluded, they often push the child to take more forceful action. For example, a parent reporting an incident of alleged sexual

harassment may advise the child/employee against immediately lawyering up if the parent recognizes that the allegations will be taken seriously, thoroughly investigated and appropriately resolved. That said, there are a few unbreakable rules that should be obeyed:

1. Parents should not be permitted to accompany a child to an interview or to submit an application on behalf of the child.
2. Employees should be told and reminded as needed that concerns about their employment must be raised by the employees themselves, *not* by relatives, spouses, or girlfriends.
3. Do not discuss any employment issues with the parent. If for some reason you do involve the parent, the employee must also be present.
4. If mom asks questions or raises issues by e-mail, any e-mail response should be sent to the employee only.
5. Do not disclose confidential employer or co-worker to the parent.
6. Do not disclose confidential employee medical information; it doesn't matter if the mom or dad are doing the asking.
7. Require employees to follow procedures for calling in sick. Parents should not be calling when the child is sick unless it's a medical emergency.
8. Parents should not be permitted to sign benefit elections or make other decisions.
9. Clearly define the boundaries of mom's involvement, if mom is to be involved at all.
10. If dad is present for meetings, speak directly to the employee, not dad.
11. Consider putting in writing the employee's consent to parental involvement.
12. Remember and respect the bounds of company, co-worker and employee confidentiality.
13. Avoid the appearance of a relationship with the parent that excludes the employee.
14. Advise the employee that repeated, unwelcome intrusions by mom or dad may have unintended, negative consequences not only for the employer, but also for the *employee's* reputation and career.

Remember, the goal is avoiding workplace disruption or handing over your rights as an employer-- you aren't obligated to filter through a parent first.

DISCLAIMER

COMMUNITY BANKERS' ADVISOR is designed to share ideas and developments related to the field of banking. It is not intended as legal advice and nothing in the COMMUNITY BANKERS' ADVISOR should be relied upon as legal advice in any particular matter. If legal advice or other expert assistance is needed, the services of competent, professional counsel should be sought.