

California Court Rejects Class Action over Application Form Question Where Class Representatives Were Not Harmed

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On December 10, the California Court of Appeal granted summary judgment in favor of Starbucks Corporation, finding that plaintiffs seeking to represent a potential class of 135,000 job applicants failed to show they were harmed by an allegedly improper application form question. Although Starbucks defeated the class action, the case (*Starbucks Corp. v. Superior Court*) demonstrates that employers operating in California should ensure that job applications and other employment documents unambiguously comply with California law, especially with respect to the location of California-specific instructions on documents.

Background

Under California Labor Code Sections 432.7(c) and 432.8, an employer may not ask applicants about certain criminal convictions, including most marijuana-related convictions that are more than two years old. The Starbucks application asked applicants: "Have you ever been convicted of a crime in the last seven (7) years?" However, the reverse side of the application included, directly above the signature line, various disclaimers for U.S. applicants and applicants of several states, including a California disclaimer that provided: "***CALIFORNIA APPLICANTS ONLY: Applicant may omit any convictions for the possession of marijuana (except for convictions for the possessions of marijuana on school grounds or possession of concentrated cannabis) that are more than two (2) years old, and any information concerning a referral to, and participation in, any pretrial or post trial diversion program.***"

The three plaintiffs contended that the disclaimer was buried within a block of text placed at the end of the application, and included disclaimers about other states. They argued that job applicants could easily overlook the disclaimer, might not revise their responses after reading the disclaimer, or might not want to ask for a clean copy of the application. Two of the plaintiffs admitted that they understood that the application did not require them to disclose marijuana convictions more than two years old. None of the plaintiffs had ever had a marijuana conviction.

The superior court denied Starbucks's motion for summary judgment, finding that the question about convictions was a facial violation of the Labor Code, which imposed strict liability on employers. The court found there was a triable issue of whether the disclaimer was sufficient to alert an applicant that older marijuana convictions did not have to be disclosed. The court certified a class of all California applicants who submitted an employment application to Starbucks within the year before the lawsuit

was filed. The court ruled that each applicant could seek a \$200 penalty under the statute, creating a potential liability of at least \$26 million.

Court of Appeal Agrees That the Location of the California Disclaimer on the Application Was Problematic

The court of appeal agreed with the trial court that the location of the disclaimer on the job application presented “significant problems.” The court stated that Starbucks would have been entitled to summary judgment if the disclaimer had been placed immediately after the convictions question. However, because the bolded disclaimer was on the reverse side of the application at the end of a 346-word paragraph, after disclaimers about other states, the court found that “[a]ny value to be gained by emphasis is submerged in a veritable sea of boldface type.” The court concluded that reasonable applicants could believe they were required to answer the convictions question and might not notice “the misplaced California disclaimer on the back side.” The court found that an “unintended consequence of Starbucks’ one-size-fits-all style for its employment applications is a lack of clarity for which California law strives.”

Court of Appeal Grants Summary Judgment to Starbucks Because the Plaintiffs Could Not Prove Harm

Although the placement of the California disclaimer was problematic, the court concluded that the named plaintiffs were not entitled to recovery under the statute. First, two plaintiffs admitted that they understood, when they filled out the application, that they did not have to disclose marijuana-related convictions more than two years old. The court rejected allowing persons who have not been deceived to sue on behalf of others, as this could “create a whole new category of employment—professional job seekers, whose quest is to voluntarily find (and fill out) job applications which they know to be defective, solely for the purpose of pursuing litigation.”

Second, none of the plaintiffs had a marijuana conviction. The court disagreed with the trial court’s view that anyone who filled out an application could automatically recover the \$200 penalty. The court concluded that “[o]nly an individual with a marijuana-related conviction falls within the class of people the Legislature sought to protect.” The court declined “to adopt an interpretation that would turn the statute into a veritable financial bonanza for litigants like plaintiffs who had no fear of stigmatizing marijuana convictions.” The court interpreted the penalty statute narrowly “in accordance with the traditional principle that the applicant be a person who has been *aggrieved* by the statutory violation.” Because the plaintiffs had no marijuana convictions to disclose, the court directed the trial court to grant Starbucks’ summary judgment motion.

Practical Considerations for California Employers

This court’s decision is good news for employers because it holds that applicants and employees must be harmed by a Labor Code violation in order to recover penalties provided in the Code. The case will likely be cited in other class actions where employers are accused of technical violations of the Labor Code.

Nevertheless, this case is a warning to employers to make certain that their applications and other form employment documents contain appropriately worded and placed statements about California law. This is especially true for nationwide employers that use standard form documents. Although the *Starbucks* case addressed compliance with Labor Code Sections 432.7(c) and 432.8, California law creates other

