

Bankruptcy and Employment Discrimination

A common question many debtors ask bankruptcy attorneys is whether an employer can discriminate against an employee or a job applicant due to a bankruptcy on their credit report. At first glance, the Bankruptcy Code seems to provide a broad range of protection against debt-related employment discrimination. Section 525 of the Bankruptcy Code prohibits private employers from terminating employees or discriminating with respect to employment solely because a person: (1) is or has been a debtor in bankruptcy; (2) has been insolvent prior to filing bankruptcy but before receive a grant or denial of a discharge; or (3) has not paid a debt what was dischargeable or was discharged in bankruptcy. However, the courts have limited the effectiveness of this statute.

In 2002, the 9th Circuit Court of Appeal ruled that an employee who threatened to file for bankruptcy was not protected by the Bankruptcy Code. Norbert Majewski became an employee at a hospital where he had incurred a large amount of medical debt from an emergency procedure. After 3 years of being unable to repay his debts, the hospital fired Mr. Majewski when he said he was going to file for bankruptcy. The Court of Appeal ruled that the statute only protected people who had actually filed for bankruptcy.

Other courts have also focused on a literal interpretation of the portion of the statute prohibiting employment discrimination “solely” due to filing bankruptcy. Even the smallest non-bankruptcy related reason for termination could be sufficient grounds for an employer to defeat a discrimination claim brought under Section 525 of the Bankruptcy Code.

In this economy, debtors can expect that employers will be more selective in the hiring process with more extensive background checks. The best thing a debtor can do is to be open and honest if the topic comes up during an interview. There will always be potential employers who say “thanks for being honest” and yet still make you feel like you are being judged. And if you don’t get the job, it probably would not have been a good fit anyway.

If you are in Southern California and want to know how bankruptcy might impact your job, please feel free to contact us for a free consultation.

About the Author: [Carl H. Starrett II](#) has been a licensed attorney since 1993 and is a member in good standing with the California State Bar and the San Diego County Bar Association. Mr. Starrett practices in the areas of [bankruptcy](#), [business litigation](#), [construction](#), [corporate planning](#) and [debt collection](#).