

Can my (private) employer fire me for filing for bankruptcy?

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The answer is No. It is plainly stated in the bankruptcy code that:

11 U.S.C. 525 . . .

(b)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, a debtor or bankrupt under the Bankruptcy Act, or an individual associated with such debtor or bankrupt, solely because such debtor or bankrupt— (1) is or has been a debtor under this title or a debtor or bankrupt under the Bankruptcy Act; (2) has been insolvent before the commencement of a case under this title or during the case but before the grant or denial of a discharge; or (3) has not paid a debt that is dischargeable in a case under this title or that was discharged under the Bankruptcy Act.

This may beg the question what a prospective employer can do when confronted with *an applicant* who has filed bankruptcy. Some commentators take the position that the answer whether discrimination on this basis is allowed is no. However, almost all of the cases that have interpreted this provision have ruled that it only applies to the debtor's current employer. *In re Hardy*, 209 B.R. 371, 374-376 (Bankr. E.D. Va. 1997); *In re Merriweather*, 185 B.R. 235 (Bankr.S.D.TX 1995); *In re Briggs*, 143 B.R. 438 (Bankr.E.D.MI 1992). *But see In re McNeely*, 82 B.R. 628 (Bankr. S.D. Ga. 1987)(applying Section 525(b) to service purchaser/independent contractor relationship). None of these cases are binding though, so the question is an open one.

There are some other considerations if you are applying for a new job and concerned over this particular potential ramification of filing for bankruptcy. First, the ambiguity noted above may be enough to stop any employer from taking the chance of violating the law. Typically employers, and especially their counsel, like to take the safe road. Second, the percentage of employers that truly take action based on a credit report, even if they do check it, might be less than you think (I personally have never heard of someone not getting a job due to a prior bankruptcy). Third, an employer may prefer that a person had filed for bankruptcy and eliminated their debt, as opposed to continuing on with a significant debt load. They could be concerned about those with a greater incentive to steal. Who do you think is more of a risk to employ, a person who is probably debt free or someone struggling to carry a significant debt load? Finally, the pros and cons of a decision to file bankruptcy should be carefully weighed with competent counsel. There is wisdom in a multitude of counselors.

Contact: George E. Bourguignon, Jr.

(413) 746-8008

gbourguignon@bourguignonlaw.com