

FOR IMMEDIATE RELEASE
November 10, 2015

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Major healthcare company Genesis sued for discriminating against prospective employee with unrelated criminal history

Companies confront fair hiring practices as nation rethinks its incarceration policies and release of thousands of federal prisoners begins

West Chester, Pa. – A lawsuit filed in the Chester County Court of Common Pleas alleges Genesis Health Care violated Pennsylvania law by refusing to hire a prospective employee solely because of her unrelated criminal history. Genesis operates skilled nursing facilities, assisted living centers and rehab facilities in 34 states. The company is headquartered in Kennett Square, Pennsylvania.

Taheera Heard is a 38-year-old African-American woman who was sought out by a recruiter and offered a job as a Senior IT Auditor at the administrative offices of Genesis earlier this year. After making an initial job offer, and setting a conditional start date, Genesis never got back to Ms. Heard to finalize the start date. It was only in November that Ms. Heard received notice that she was not being hired because of the results of a background check. The complaint alleges that Genesis based its decision not to hire on unrelated criminal charges, even though Ms. Heard had previously disclosed her record to the company. In anticipation of her new position, Ms. Heard had already quit her previous job, and so became unemployed.

“I am a reliable employee and I never had a problem getting hired by other companies,” said Ms. Heard. “Genesis’ actions left me without a job and without security for my family. I want to make sure no one else has to go through this kind of ordeal.” Ms. Heard has worked gainfully in the field of financial analysis for more than a decade. When recruited by Genesis, Ms. Heard had worked as a senior auditor at TD Bank for two years; TD Bank also knew of her criminal charges but did not consider them a barrier to employment.

Pennsylvania law protects people like Ms. Heard from this type of automatic disqualification. Under Pennsylvania’s Criminal History Record Information Act, employers making hiring decisions cannot consider convictions unrelated to a particular job, nor can they consider arrests that did not lead to convictions. Employers must also provide written notice when denying a job offer because of a criminal record.

“Unfortunately, many employers fail to comply with this statute, which can turn even minor brushes with the law into lifetime sentences of unemployment,” said Benjamin Geffen, staff attorney with the Public Interest Law Center and one of the attorneys representing Ms. Heard. “Now more than ever employers should take notice and begin complying with these laws as more formerly incarcerated individuals begin looking for jobs.”

The case is being filed as both political parties have begun to recognize the grave human cost of the hard-line charging and conviction policies that began in the 1980s. For example, starting November 1, 2015, more than 6,000 prisoners had their drug-related sentences shortened and were released from the federal prison system under a 2014 amendment established by the United States Sentencing Commission which recognized that the country's criminal justice system is sweeping in too many people and imposing excessive sentences. The sentencing changes make more than 40,000 federal prisoners eligible for shortened sentences for drug-related convictions.

“Our economy will face even greater constraints if employers unlawfully use criminal records to exclude thousands of valuable, productive employees from gaining good jobs,” said Ryan Allen Hancock, a partner in the Philadelphia labor and employment law firm of Willig, Williams & Davidson and co-counsel on the case. “Employers like Genesis need to improve their hiring policies to give individuals an opportunity to stabilize their lives and contribute to our community.”

Ms. Heard is receiving representation through the Fair Employment Opportunities Project, a coalition of legal groups working to improve access to employment for people with criminal records. The legal groups representing her are Philadelphia Lawyers for Social Equity, the Public Interest Law Center, and Willig, Williams & Davidson. The group has previously represented clients in matters involving Sunoco and Veeva Systems, both of which now have hiring policies that comply with the Criminal History Record Information Act.

“Individualized assessment of each applicant benefits the employer, the potential employee, and our economy by allowing for hard work, rehabilitative efforts and cognitive changes to count more in the hiring process than past mistakes,” said Michael Lee, executive director of Philadelphia Lawyers for Social Equity.

In Philadelphia, an estimated 20% of adults have a criminal record that could affect their ability to gain employment. Nationwide, the use of criminal background checks has skyrocketed over the last two decades, with recent estimates showing that more than 80% of employers view criminal histories during hiring. The increased use of background checks results in especially large barriers for minorities, who are disproportionately convicted of crimes. In Pennsylvania, male minorities represent only 16.2% of the state population, but account for 61% of prison inmates.

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Philadelphia Lawyers for Social Equity (PLSE)

PLSE works toward just outcomes for low-income individuals who have had contact with the Pennsylvania criminal justice system. For more information visit www.plsephilly.org or on Twitter @PLSEPhilly.

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The Public Interest Law Center uses high-impact legal strategies to improve the well-being and life prospects of vulnerable populations by ensuring they have access to fundamental resources

including a high-quality public education, access to health care, employment, housing, safe and healthy neighborhoods and the right to vote. For more information visit www.pubintl.org or on Twitter @PubIntLawCtr.

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