



## News

### Cheryl Wilke Authors Article on Employers' Right to Consider Job Applicants' Bankruptcy History

March 23, 2012

Cheryl Wilke authored the article, "Board of Contributors: Employers May Consider Job Applicant's Bankruptcy History," which appears in the March 23, 2012, issue of the South Florida publication, *Daily Business Review*.

The article discusses the issue of whether an employer may decline to hire a prospective applicant based solely on the results of a credit background check including findings of bankruptcy, assuming the proper release was first obtained from the applicant. The U.S. Court of Appeals for the Second Circuit has held that the employer may not do so, but other federal courts of appeal have held otherwise. The issue was one of first impression in the U.S. Court of Appeals for the Eleventh Circuit.

Ms. Wilke represented the employer in such a case, which was brought by a prospective employee who had sought, but failed to obtain, a management position with the employer. The decision not to hire was based on the prospective employee's poor credit history and a recent bankruptcy. It was made at the conclusion of an on-the-job evaluation for which prospective employee was paid a nominal daily rate, but not formally employed. The prospective employee sued for discrimination under the U.S. Bankruptcy Code. The employer prevailed at trial, and the employee appealed. The Eleventh Circuit affirmed and recently denied a motion for rehearing and motion for rehearing *en banc*.

Writes Ms. Wilke, "... employers should, and now do, have the right to make decisions as to the employees in their business based on their previous credit histories." She added, "[a]s my client stated, we want the people responsible for the money of the business to show their responsibility with their own money."

Access the full online issue of the article, "[Board of Contributors: Employers May Consider Job Applicant's Bankruptcy History](#)."

#### Service Areas

Labor & Employment