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MEMORANDUM

TO : Clients and Friends

FROM : Labor and Employment Law Department of McConnell Valdés

RE : Employment Discrimination in the Hiring Process/
Past Convictions

DATE : November 10, 2005

On October 24, 2005, a split Puerto Rico Supreme Court upheld a Court of Appeals decision granting protection against employment discrimination by reason of social condition to an individual with a criminal record. Rosario Díaz v. Toyota de Puerto Rico Corp., 2005 T.S.P.R. 154 (2005). The Court considered the legitimacy of discrimination on account of the past criminal conviction of an employment applicant. Three of the six Supreme Court members held that ex-convicts, as a group, have been historically relegated and stigmatized and deserve protection from discrimination on the basis of social condition under Act No. 100 of June 30, 1959 ("Act 100").

Although this Judgment does not have precedential value because of the lack of a majority opinion, the views expressed by the members of the Court provide valuable insight as to what could be an eventual binding Opinion on this subject. Employers should consider all relevant information available in the hiring process and ponder the pertinent precautionary steps to avoid liability.

One alternative that is tenable is avoiding blanket exclusions of employment applicants based on criminal convictions. Instead, the particular circumstances related to the applicant's conviction should be analyzed to determine whether exclusion is appropriate before an employment offer is made. Among other factors, employers may consider: the nature and gravity of the crime committed; the relation between the crime committed, the position sought, and the requirements and responsibilities of the position; the nature and extent of the rehabilitation of the applicant; the time that has elapsed between the commission of the crime and the employment application; and the legitimate interest of the employer in protecting its property, security and well-being of its employees, as well as those of third parties.

If you have any question, or wish additional information regarding this matter, please contact any of the attorneys at the Labor and Employment Law Department of McConnell Valdés.