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BANKRUPTCY AND YOUR JOB

WILL YOU BE FIRED? WILL YOU BE HIRED?
CAN YOU GET OR KEEP A SECURITY CLEARANCE?

Misconceptions about how bankruptcy affects employment are common. Fear that bankruptcy will lead to loss of a job or job opportunities is one of the main reasons people avoid filing.

Bankruptcy does not mean the end of employment or good paying jobs. Even though bankruptcy is a matter of public record, an employer will rarely, if ever, discover your bankruptcy, unless the employer pulls your credit report or you owed your employer money. In most circumstances, you are under no legal obligation to reveal your bankruptcy to your employer.

If your job requires a security clearance, bankruptcy may help, rather than hurt your ability to maintain it.

WILL YOU BE FIRED?

Whether you file Chapter 7 or Chapter 13 bankruptcy, your current employer is prohibited from firing you because of it. The law prohibits both government and private employers from terminating your job due to a bankruptcy filing. However, keep in mind that your job performance can always be under review. The bankruptcy laws will not prevent you from being fired for other valid reasons (*e.g.*, tardiness, incompetence, breaking company rules) or being laid off if your company is downsizing.

The law also prohibits discrimination with respect to your employment, or the employment of anyone associated with you, because of your bankruptcy. If you are already employed, you cannot be treated differently just because you filed for bankruptcy. For example, if you were in line for a promotion or a raise, you cannot legally be denied it solely because you filed bankruptcy. Similarly, you may not be demoted or have your salary reduced because of your bankruptcy.

WILL YOU BE HIRED?

Government Employers

Bankruptcy law provides some protection for bankruptcy filers who are seeking new employment, but the law does not apply equally to all employers.

No government agency, whether federal, state, or local, can refuse to hire you because of your bankruptcy. Furthermore, no governmental unit may deny, revoke, suspend, or refuse to renew your professional license (*e.g.*, a doctor, hair stylist, or contractor) because you have filed for bankruptcy.

Private Employers

In contrast, there is no similar restriction for private employers. Unfortunately, private employers do have the right to deny you employment based on the sole fact you filed bankruptcy. Some prospective employers routinely conduct credit checks on applicants, which would reveal a bankruptcy. But keep in mind that most companies are interested in your credit history only if the position requires you to handle cash or manage financial responsibilities. Even then bankruptcy is not necessarily a barrier to employment. In general, the older your bankruptcy, the less likely it will have an impact on your job search.

While your credit might be a mark on your record, there is no reason it has to be the defining characteristic in your job search. A prospective employer must request permission to check your credit. If the employer doesn't check, you will never have to disclose the filing. When you know your credit is going to be pulled, it might be worthwhile to be proactive and disclose the bankruptcy filing and some facts about your case. Most employers will view bankruptcy as a responsible choice for dealing with overwhelming debt.

Looking for a Job after Filing Bankruptcy; Some Tips

Know your rights: Employers can't ask you if you have bad credit, have declared, or are intending to declare bankruptcy, or if you currently have wage garnishments. However, as discussed above, these things will show up on a credit report and private industry may deny you employment because of a bankruptcy (although we don't see it happen often). Here is where candor and a proactive approach might be best.

Be candid: When you know the bankruptcy is going to show up on a credit check, talk to the prospective employer before the results of the credit check come in. Prepare a brief explanation of why your credit was bad and share some basic details about the bankruptcy (but keep it brief). For example, if your bankruptcy filing was a result of the burst of the housing bubble, you might approach the potential employer and state, "When you pull my credit you are going to see I filed for bankruptcy two years ago. I am not trying to hide this fact. I found myself in a bad position after the housing crisis and the bankruptcy has enabled me to get a fresh start. I am responsible with money and I don't feel my bankruptcy is indicative of my overall ability to do this job." Potential employers may appreciate your candor.

Provide references: Employers might see someone who filed for bankruptcy as a risky hire. One way to offset that is to provide quality personal and professional references that the potential employer may contact. It's the best way to show that you are trustworthy.

CAN YOU GET OR KEEP A SECURITY CLEARANCE?

If your work requires a security clearance, you may fear that bankruptcy will jeopardize it. Surprisingly, a person who does not file bankruptcy when facing financial problems is probably more at-risk for adverse action than a person who does file.

Directive 5220.6

DoD Directive 5220.6 is the governing law, and it has some surprising things to say about the relationship between bankruptcy filing and security clearance revocation. Directive 5220.6 provides guidelines for situations that raise security concerns. Each guideline sets forth the policy concerns, specific examples of potentially disqualifying misconduct, and possible mitigating circumstances. Guideline F pertains to "Financial Concerns."

Potentially Disqualifying Conditions

The government is worried that individuals facing debt problems may feel pressure to commit unlawful acts – such as selling secrets – in order to raise funds. Guideline F provides four specific conditions that could raise a security concern and may be disqualifying. Arguably none of these apply to most people who file for bankruptcy.

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- **A history of unmet obligations:** Statistically, most people do not file bankruptcy because their expenses consistently exceed their incomes. Rather, one-time financial disasters, like a job loss or illness, trigger most filings.
- **Illegal or deceptive practices:** Nearly all consumer bankruptcy filers are overwhelmed by financial circumstances largely beyond their control; very few have issues relating to things like “embezzlement, employee theft, check fraud, [or] income tax evasion.”
- **Behavior-related financial problems:** Similarly, almost no one files bankruptcy because of “gambling, drug abuse, alcoholism, or other issues of security concern.” And, if so, it is those behaviors, not the bankruptcy, that may impact the security clearance.
- **Unwillingness or inability to repay debts:** Bankruptcy filers may be unable to pay their debts, at least according to the draconian terms the creditors propose, but they are almost never unwilling to pay them.

Mitigating Circumstances

Almost all of the mitigating circumstances mentioned in Guideline F weigh in the bankruptcy filer’s favor.

- **The financial problems were the result of an isolated incident:** As mentioned earlier, most people file bankruptcy because of a financially traumatic event that had a snowball effect.
- **They were not recent:** As a rule of thumb, most people file bankruptcy at least a year or so after the financial disaster, because most folks see bankruptcy as a last resort. Although the term is not defined, most people would not consider events that happened a year or more ago to be “recent.”
- **They were caused by uncontrollable forces:** This is a big one, because the four examples in the DoD’s list (“loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation”) almost exactly mirror the reasons that most people file bankruptcy.
- **You received debt counseling:** All bankruptcy filers go through at least two rounds of debt counseling as a requirement for filing bankruptcy.
- **The situation is improving:** Filing a bankruptcy petition that will ultimately result in the discharge or repayment of most all consumer debts is most certainly a “clear indication[] that the problem is being resolved or is under control.”
- **You made a good faith effort to resolve the problem:** Similarly, filing a voluntary petition is sometimes the only way to “resolve” debts that, quite simply, you cannot possibly afford to repay.

If the financial problems that led to your bankruptcy filing were of the one-off and hard-luck variety, and this is nearly always the case, there should be little cause for concern. A bankruptcy filing may be the best way to save a security clearance.

IN SUMMARY

- Your current job is protected against any retaliation from your bankruptcy filing, including termination, demotion or reduction in pay, and denial of raises and promotions.
- Filing for bankruptcy will not prevent you from being terminated for other valid reasons.
- Your bankruptcy filing will not preclude you from getting hired for most government jobs.
- If your job requires a security clearance, bankruptcy will usually put you in a better position than not filing. Continuing to carry debt you cannot repay makes you more vulnerable to bribery, blackmail, and selling secrets.
- For many positions, a future employer will not care about, or even be aware of your personal bankruptcy.
- For certain jobs (primarily those involving money and financial responsibilities), private industry employers may care about your bankruptcy.
- Legally, a private employer may decline to hire you because of a bankruptcy.
- There are some steps you can take to lessen the effect of the bankruptcy on your future employment opportunities, including candidly explaining your bankruptcy and providing references.