

## Can You Discriminate against a Bankruptcy Debtor?

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The United States Bankruptcy Code contains anti-discrimination provisions, which protect bankruptcy debtors from particular types of discrimination in specific situations. This article focuses on the anti-discrimination provision in 11 U.S.C. § 525(a), relating to governmental entities, and is not intended to be an exhaustive list. Although an anti-discrimination provision does exist with respect to private entities, set forth in 11 U.S.C. § 525(b), it is only briefly discussed in this article.

Section 525(a) of the Bankruptcy Code prohibits governmental entities from discriminating against a person, including an individual, partnership, or corporation, because that person filed for bankruptcy, or because that person was insolvent before or during a bankruptcy case, or because that person failed to pay a debt that was discharged in a bankruptcy case. Pursuant to section 525(a), a governmental entity is not permitted to discriminate in the following ways: by denying, revoking, suspending, or refusing to renew a license, permit, charter, franchise or other similar grant; by denying employment; by terminating employment; or by discriminating with respect to employment. *See*, 11 U.S.C. § 525(a); *see also*, 11 U.S.C. § 101(41) (defining the term “person”).

There are certain instances when section 525(a) does not apply. For instance, in *In re 1900 M. Restaurant Assocs., Inc.*, 352 B.R. 1, 5-7 (D.D.C. 2006), the Court held that the Internal Revenue Service did not violate section 525(a) by refusing to process a debtor’s offer to compromise its federal tax liability, based solely on the fact that the debtor had filed for bankruptcy. The Court reasoned that an offer to compromise is not similar to a “license, permit, charter, franchise or other similar grant” within the ordinary meaning of those terms, as set forth in section 525(a). As another example, in *Ayes v. U.S. Dep’t of Veterans Affairs*, 473 F.3d 104, 108-12 (4<sup>th</sup> DCA 2006), the Court held that the U.S. Department of Veterans Affairs did not violate section 525(a) by refusing to fully restore veteran home loan guaranty entitlements, based solely on the fact that the veterans previously received bankruptcy discharges. The Court in *Ayes* relied on the plain meaning of the statute, holding that section 525(a) does not apply to the veteran home loan guaranty program because it is not a “license, permit, charter, franchise, or other similar grant.”

Section 525(b) prohibits a private employer from terminating the employment of an individual, or discriminating against an individual with respect to employment, because that individual filed for bankruptcy, or because that individual was insolvent before or during a bankruptcy case, or because that individual failed to pay a debt that was discharged in a bankruptcy case. *See*, 11 U.S.C. § 525(b). Section 525(b) is limited more in its scope than section 525(a) because its prohibition only encompasses discrimination in employment; whereas, the ban on discrimination in section 525(a) is more expansive with respect to governmental entities. Moreover, section 525(a) provides protection against discrimination in hiring, but section 525(b) does not.

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