

New Massachusetts Law Prohibits Employers from Asking about Criminal Convictions on Job Applications

Governor Patrick recently signed new legislation that will change the way Massachusetts employers can use criminal background information in making employment decisions. Most significantly, the new legislation prohibits employers with six (6) or more employees from asking applicants about any criminal information, including criminal convictions, on an "initial written job application." The only exception to this prohibition is where either state or federal law dictates that conviction(s) result in presumptive or mandatory disqualification for the job. This prohibition is a change from existing law which permits employers to ask about felony convictions and certain misdemeanor convictions on a job application.

It appears plain from the statute that after the initial written application, either during or after the interview, the employer may ask the applicant for criminal history information. The employer should be mindful that existing restrictions on such questioning still apply, so that employers are still prohibited from asking applicants and current employees about certain misdemeanor convictions at any time. The provision of the law that prohibits employers from asking about convictions in an initial written application goes into effect on November 4, 2010.

Additional changes in the law will go into effect on February 6, 2012, including, but not limited to, the following:

- Employers who obtain an applicant's Criminal Offender Record Information ("CORI") compiled by the Massachusetts Criminal Justice Agency must provide the applicant with a copy of the record prior to questioning the applicant about the CORI information or taking adverse action against the applicant based upon the CORI information;
- Employers who conduct five (5) or more criminal background checks per year will have to adopt a CORI policy stating that the employer will (i) notify applicants of potential adverse decisions based on the CORI report; (ii) provide a copy of the CORI report to the applicant; and (iii) provide applicants with information on the process for correcting their criminal record;
- Employers seeking a CORI report will have to certify that (i) he/she is a designee of the employing entity; (ii) the purpose of the request is to evaluate a current or prospective employee; (iii) the current or prospective employee has signed a written authorization (which the employer must keep for one year); and (iv) the employer verified the identity of the current or prospective employee by reviewing government-issued identification; and
- Employers are prohibited from maintaining CORI records for more than seven (7) years after the date the candidate was not hired or, in the case of an employee, seven (7) years after the date of the employee's last day of employment.

As the prohibition on inquiring about convictions goes into effect on November 4, 2010, employers should immediately review their employment applications and also take the opportunity to view all of their current hiring policies and practices to ensure they are fully compliant with the new law.

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