



Massachusetts Bans Criminal Conviction Inquiries on Initial Employment Applications

Effective November 4, 2010, Massachusetts employers – both private and public – are no longer permitted to request an applicant’s criminal record information on an initial written application form. The only exception to this new rule is when an employer is prohibited by law from hiring someone because of a criminal conviction. This change in the law comes as part of recent legislation reforming the Commonwealth’s Criminal Offender Record Information (CORI) system, and is designed to open doors for reformed criminal offenders who may otherwise be denied employment opportunities.

Although employers are now prohibited from requesting CORI data on an initial job application, the new law does not prevent employers from asking applicants about their criminal history during the interview process. But, as under the earlier law, such inquiries are limited. Employers may not request information about (i) an arrest, detention, or disposition regarding any violation of law for which no conviction resulted; (ii) a first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbing the peace; or (iii) a misdemeanor conviction that is more than five years old.

Under the new law, CORI data will be maintained by a new state agency called the Department of Criminal Justice Information Services (“DCJIS”), which will largely supplant the existing Criminal History Systems Board. Beginning in May 2012, CORI records will be available to employers online. Employers will be required to first obtain a job applicant’s written authorization before requesting his or her CORI records. Most employers will be entitled to information concerning only (1) all murder, manslaughter, and sex offense convictions, regardless of when they occurred; (2) felony convictions up to ten years old or for which the applicant was incarcerated within the last ten years; (3)

misdemeanor convictions up to five years old or for which the applicant was incarcerated within the last five years; and (4) pending criminal charges. Before questioning a candidate about his or her criminal history, or taking adverse action based on such history, an employer must provide the candidate with a copy of the CORI report. An employer that makes a hiring decision in reliance on information contained in an official CORI report will not be held liable in a subsequent negligent hiring lawsuit provided the hiring decision was made within 90 days of receipt of the CORI report.

Employers that conduct at least five criminal background checks per year must put into place a written policy stating that they will (1) notify applicants that they could be subject to an adverse hiring decision based on their CORI report; (2) provide a copy of the criminal record and policy to applicants; and (3) provide information about how an applicant can correct an erroneous report.

Lastly, under the new law, employers may not maintain CORI records for more than seven years from the date an employee terminates employment, or from the date the decision was made not to hire an applicant.

In light of the changes in the CORI law, employers doing business in Massachusetts must amend their employment applications to eliminate any questions seeking information about an applicant’s criminal history. Employers that have not yet amended their application forms should either instruct applicants not to answer criminal history questions, or cross those questions off the form.

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