

## ALERTS AND UPDATES

### **Reminder: Review Employment Application Forms by November 4, 2010, for Compliance with "Ban the Box" Legislation in Massachusetts**

October 1, 2010

Beginning on November 4, 2010, Massachusetts employers may no longer ask job applicants to check a box on initial employment applications to indicate whether they have been convicted of a crime. This "ban the box" legislation, which amends the anti-discrimination statute in Massachusetts and is part of a greater reform of the Criminal Offender Record Information (CORI) law, is intended to provide greater employment opportunities for those with past criminal convictions.

The law does not, however, preclude employers from asking about CORI during interviews or after the initial employment application. As in the past, employers asking about criminal background information during interviews may still not inquire about:

- An arrest, detention or disposition regarding any violation of law in which no conviction resulted;
- A first conviction of certain designated misdemeanors; or
- Any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting from it occurred five or more years earlier.

It is important to note that the "ban the box" legislation does not apply in situations where the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction, or where the employer is subject to an obligation imposed by any federal or state law or regulation not to employ persons who have been convicted of certain crimes.

Additional changes to the CORI law which are likely to impact employers and will become effective in 2012 include the following:

- Prior to questioning an applicant about CORI, a prospective employer must provide an applicant with a copy of the CORI.
- An employer who rejects an applicant for employment based on CORI must provide the applicant with a copy of the CORI.
- Employers who annually conduct five or more criminal-background investigations must maintain a written policy that the employer will: (i) notify applicants of the potential adverse decision based on CORI, (ii) provide a copy of the CORI and policy to the applicant and (iii) provide information concerning the process of correcting an error in the CORI.
- Employers may not maintain CORI information for more than seven years after employment ends or after the date the employer decides not to employ the candidate.

## **What This Means for Employers**

Massachusetts employers may want to promptly review employment applications to ensure that they are not asking job candidates about convictions on initial employment applications. Employers may also want to consider reviewing their policies and practices with respect to CORI information and determine what steps may be needed to comply with the remaining provisions of the reformed CORI legislation.

## **For Further Information**

If you have any questions about the information addressed in this *Alert*, please contact any [member](#) of our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.