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COUNSELLORS AT LAW

CLIENT ALERT (DECEMBER, 2010)

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION ISSUES FACT SHEET REGARDING RECENT CORI REFORM LEGISLATION

The Massachusetts Commission Against Discrimination (the “MCAD”) recently issued a “Fact Sheet” regarding its interpretation of certain aspects of the legislation signed by Governor Patrick in August of 2010 restricting an employer’s ability to request criminal background information from applicants on “its initial written application form.” Although the Fact Sheet is not a formal regulation, and is not necessarily binding upon any court, the Fact Sheet certainly provides insight into the MCAD’s approach to enforcement of this new law.

The Fact Sheet commented on a number of questions which remained after the legislation was enacted, including the following:

- National and international employers may use a standard employment application form, provided that the form contains explicit instructions to individuals in Massachusetts not to disclose criminal background information. The Fact Sheet also provides a sample disclaimer (which it says must be in bold face type) to include in such an employment application:

MASSACHUSETTS APPLICANTS ONLY:

Under Massachusetts law, an employer is prohibited from making written, pre-employment inquiries of an applicant about his or her criminal history. MASSACHUSETTS APPLICANTS SHOULD NOT RESPOND TO ANY OF THE QUESTIONS SEEKING CRIMINAL RECORD INFORMATION.

- The MCAD will presume that “a written application form requesting criminal background information prior to an interview is part of the ‘initial written application.’” This statement clearly sets forth the MCAD’s interpretation of the law as prohibiting *any* written request for criminal information *prior to an interview*. In the Fact Sheet, the MCAD claims that the legislative intent behind this new law is to “give prospective employees the opportunity to meet employers before disclosing their criminal histories, thereby reducing barriers to employment applicants with a criminal history.”
- “During an interview or thereafter,” the employer may ask the applicant about the applicant’s criminal history information (subject to certain limitations under Massachusetts law regarding the types of offenses about which the applicant may be questioned).

Please feel free to contact us if you have any questions regarding this or any other labor or employment issue.

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