

CLIENT ALERT – OCTOBER 2010

New Rules for Employers Regarding Requests for Job Applicants' Criminal History

As part of an overhaul of the Criminal Offender Register Information (“CORI”) system in Massachusetts, new restrictions will apply to employer requests for criminal history information, beginning November 4, 2010. Here are some of the details.

1. New prohibition against criminal history requests on initial written application forms, with limited exceptions

As of November 4, 2010, employers are prohibited under a new subsection of the Fair Employment Practices from requesting any criminal history information on an initial written job application form. This “Ban the Box” provision means employers must change their application forms and get rid of the ubiquitous felony/misdemeanor checkbox. This new rule does not apply to employers that are required by law not to employ people who have been convicted of particular offenses, or to positions for which there is a disqualification under law based on a criminal conviction. (For example, positions in the fields of banking and financial services, child education or care, and health services, to name a few, have statutorily-mandated disqualifications prohibiting people with certain types of criminal convictions from being employed in those positions.)

Importantly, the new law does not prohibit employers from asking questions about an applicant’s criminal history further down the line in the application process, such as in a job interview. Beginning February 6, 2012, however, an employer must provide an applicant with a copy of any CORI in the employer’s possession *before* questioning the applicant about their criminal history. Employers must also furnish an applicant with a copy of any CORI if the employer makes an adverse employment decision based on the applicant’s criminal history. Further, any employer that annually conducts five or more criminal background investigations must maintain a written CORI policy meeting certain requirements. Similar procedural requirements are currently in effect under regulations of the Criminal History Systems Board.

2. New digital CORI database and access requirements

A possible trade-off is that, as of February 6, 2012, the new Department of Criminal Justice Information Services will make CORI available in a digital database on the Internet. Employers will have access to this new CORI database for purposes of evaluating current and prospective employees. Employers will need to certify that the subject authorized the employer to obtain the CORI, and that the employer verified the identity of the individual. Individuals will be able to obtain information regarding who has requested their CORI, and the new law also changes the period of time for which information will remain on an individual’s CORI report.

The new law also includes safe harbors against claims related to an employer's reliance on incorrect CORI obtained from the Commonwealth's database, and enhanced penalties for improperly obtaining or disclosing CORI.

If you would like to speak to someone about the CORI reform legislation and its new requirements, please contact Diane DeGiacomo, Chair of our Employment Law Group.

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