

Massachusetts Places Further Restrictions on Criminal Background Checks

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May 17, 2018

In 2010, Massachusetts became one of the first states to pass so-called “ban the box” legislation, which barred employers from asking prospective employees about their criminal histories on their initial employment applications. Now, eight years later, Governor Charlie Baker has signed a sweeping criminal justice reform bill into law that places new restrictions on employer inquiries into an applicant’s criminal history. The new restrictions go into effect on October 13, 2018.

The new law restricts employers’ access to criminal history information in three ways. First, the law prohibits employers from asking prospective employees about convictions for misdemeanors where the conviction, or completion of incarceration resulting from the conviction, took place three or more years prior to the application for employment, unless there has been another conviction in the previous three years. Currently, Massachusetts employers are prohibited from asking prospective employees about convictions for misdemeanors where the date of conviction, or completion of incarceration resulting therefrom, occurred *five* or more years prior to the applicant’s application (unless there has been another conviction in the preceding *five* years). (Massachusetts law also currently prohibits employers from asking prospective employees about arrests, detentions and dispositions which did not result in a conviction and first offenses for certain misdemeanors, including drunkenness, disturbance of the peace, simple assault, speeding and other minor traffic violations.)

Second, the new law prohibits employer inquiries into criminal records that have been sealed or expunged pursuant to Massachusetts law. Thus, as of October 13, 2018, an employer cannot ask about a prospective employee’s sealed record or expunged offenses.

Third, the law requires that, in those circumstances where employers are permitted to inquire about a prospective employee’s criminal history, any forms used to solicit such information must include the following language:

An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 may answer “no record” with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 may answer “no record” to an inquiry herein relative to prior arrests, criminal court appearances, juvenile court appearances, adjudications or convictions.

By October 13 of this year, employers will need to make sure that their hiring practices comply with these new requirements. Employers should train any personnel involved in hiring about what questions can and cannot be asked regarding prospective employees’ criminal records. Further, those employers that use forms to solicit information about applicants’ criminal records must revise those forms to apprise applicants of their rights with respect to expunged convictions.

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