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Client Alert: New Employer Restrictions on Criminal History Requests

BY CHELSIE A. VOKES • SEPTEMBER 27, 2018

New restrictions on employer requests for applicant criminal record information during the hiring process take effect in Massachusetts on October 13, 2018, and all employers are encouraged to review their employment application and pre-hire forms, practices, and procedures to ensure compliance. In brief, the new law prohibits employer inquiries about sealed or expunged criminal records and about any misdemeanor convictions older than three years.

Since 2010, [Massachusetts law has prohibited employers from requesting criminal offender record information](#) on an initial written job application form (subject to certain exceptions). Additionally, the law already prohibited employers from inquiring about certain criminal history information at any point during the hiring process, specifically including (1) any arrest, detention, or disposition relating to an alleged violation of law not resulting in conviction, (2) a first conviction for any of the misdemeanors of drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (3) conviction for any misdemeanor, where the conviction date (or, if later, the end date of any resulting incarceration), occurred five or more years prior to the date of the employment application or the employer's request for information, unless the person has been convicted of any offense within that same five-year period.

Three modifications to this preexisting law were signed into effect in April 2018 as part of a broader [Criminal Justice Reform Act](#), and will take effect on October 13:

1. SHORTER DISCLOSURE PERIOD FOR MISDEMEANOR CONVICTIONS

Employers may not ask for information about misdemeanor convictions (or resultant incarcerations) that occurred three or more years from the date of the application or employer information request, unless the person has been convicted of any other offense within the past three years.

2. NEW PROHIBITION CONCERNING SEALED OR EXPUNGED RECORDS

Employers may not ask for information about criminal records that have been sealed or expunged.

3. NEW NOTICE REQUIREMENT IN CONNECTION WITH ANY CRIMINAL RECORD INFORMATION REQUEST DURING THE HIRING PROCESS

As extra protection for applicants with criminal records, any employer request for criminal record information *must* contain the following notice 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.”

The policy behind the law is to enable persons with a criminal history to be given a fair chance to apply and interview for jobs, and it is safe to assume that it will be rigorously enforced. Earlier this year, the Massachusetts Attorney General’s Office reached agreements with four national employers and [issued warning letters to 17 other local businesses found to be in violation](#) of the law prohibiting employers from asking about criminal record information on an initial job application.

Employers should train personnel involved in hiring about what questions are prohibited in relation to applicant criminal record information. Additionally, all forms should be carefully reviewed and revised to ensure that they make only appropriate inquiries and provide the requisite notice language.