

News from our Employment & Labor Group

New Massachusetts Law Regarding Criminal Background Checks

On August 6, 2010, Governor Deval Patrick signed legislation that will overhaul the Massachusetts Criminal Offender Record Information (CORI) system. **This new law will have important implications for Massachusetts employers and out-of-state employers seeking to hire Massachusetts employees.**

Under the new law, employers will, for a fee, have access to a new database to evaluate current and prospective employees including full-time, part-time, contract, internship employees or volunteers. The database, which is expected to be accessible in May 2012, will only list convictions or pending charges and provided there are no subsequent offenses, felony convictions will be sealed 10 years after a sentence is served (down from 15 years) and misdemeanor convictions will be sealed five years after a sentence is served (down from 10 years). Certain convictions, such as those for murder, voluntary manslaughter and high level sex offenses, will not be sealed.

What this means for employers

Written applications: Under the new law, which takes effect in November 2010, **written job application forms can no longer contain any questions about prior criminal convictions.** However, employers may still ask applicants about their criminal history during an interview.

Copies of reports: Once the database is operational, employers who do obtain an applicant's criminal offender record information in connection with any employment

decision **must provide the applicant with a copy of the criminal history record: (a) prior to questioning the applicant about his or her criminal history and (b) if the person makes a decision adverse to the applicant on the basis of his or her criminal history.** If the employer provides the applicant with a copy of his or her criminal offender record information prior to questioning, the employer is not required to provide the information a second time in connection with an adverse decision based on this information. **Failure to provide such criminal history information to the applicant may subject the employer to an investigation, hearing and sanctions by the Massachusetts criminal record review board.**

Other convictions: Since the CORI database will only contain information from Massachusetts courts, it will not contain any information regarding out-of-state or federal convictions. Consequently, employers will still need to use vendors or other means if they are interested in checking records from other jurisdictions.

Exceptions: The law provides an exception for companies and nonprofit organizations that work with vulnerable populations, such as children, disabled and senior citizens, as well as those that are prohibited by federal or state law from hiring ex-offenders.

If you would like to discuss these issues further or have questions about this *Alert*, please contact one of the attorneys listed here. ■

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