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Labor and Employment Alert: Massachusetts Tightens its Ban-The-Box Law

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Michael C. Griffaton

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CLIENT ALERT | 12.31.2018

Massachusetts is one of 11 states that currently mandate removing criminal history questions from job applications for private employers. These states are California, Connecticut, Hawaii, Illinois, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington. At least 17 cities and counties across the country have also extended these requirements to private employers. The beginning of the new year is a good time for employers to review their hiring policies and procedures and what information they collect from applicants in this regard.

Recently, Massachusetts amended its Criminal Offender Record Information law (commonly referred to as CORI). Massachusetts law already prohibited employers from asking applicants about:

1. Arrests, detentions, or dispositions for any violation of law in which no conviction resulted;
2. First convictions for the misdemeanors of simple assault, drunkenness, affray, speeding, minor traffic violations, or disturbing the peace; or
3. Misdemeanors in which the date of conviction or completion of incarceration occurred five or more years before the application's date, unless the person was convicted of an offense within the preceding five-year period.

The changes to the CORI law now also prohibit employers from inquiring orally or in writing about an applicant's misdemeanors when the conviction or period of incarceration occurred **three** years (rather than five years as under prior law) or more before the application's date, unless the person was convicted of an offense within the preceding **three-year** period.

The changes further prohibit employers from asking applicants about criminal records that have been sealed or expunged.

Finally, employers who request criminal record information from applicants must include the following language on any information request:

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

Massachusetts has been aggressive in enforcing its ban-the-box law. In June 2018, the Massachusetts Attorney General reached agreements with several national employers (Edible Arrangements, Five Guys Burgers and Fries, and L'Occitane), and issued warning letters to 17 other Boston area businesses found to be violating state law by asking applicants about criminal record information on initial job applications. Contact your Vorys lawyer if you have questions about criminal background checks or other pre-employment inquiries.