

# Massachusetts Ban the Box 2018: Further Amendments to Criminal History and Hiring Law

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On October 13, 2018, the Massachusetts legislature amended the state's Criminal Offender Record Information (CORI) law. Many other U.S. territories and localities have passed ban-the-box laws over the last decade that limit employer inquiries into an applicant's criminal history. Massachusetts initially adopted ban-the-box legislation in August 2010.

In light of the recent amendments, here is an overview of the general state of the law in Massachusetts, highlighting the recent changes. Employers may want to take this opportunity to review their background check policies and practices to ensure they comply with the law, as amended.

## Massachusetts Prohibitions on Criminal History Inquiries

Massachusetts anti-discrimination law has long restricted what employers can ask job applicants during any stage of the hiring process. These laws already prohibited Massachusetts employers from inquiring about:

1. An arrest, detention, or disposition regarding any violation of law in which no conviction resulted;
2. A first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace; or
3. Any misdemeanor in which the date of conviction, or the completion of any period of incarceration, occurred five or more years prior to the date of the application, unless such person has been convicted of any offense within the preceding five-year period.

## 2018 Amendments

The recent changes to the law include the following:

First, the law now prohibits employers from asking job applicants (orally or in writing) about any

misdemeanor in which the date of conviction or completion of incarceration occurred three years or more before the date of the job application, unless the person was convicted of a crime within the three years prior to the employer's inquiry. This change *reduces the acceptable period of inquiry from five to three years*.

Second, the changes prohibit employers from asking applicants (orally or in writing) about *sealed or expunged criminal records*.

Third, the changes require employers requesting criminal record information to *include the following language on any requests provided to applicants*:

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.

Fourth, because of the new limitations described above, employers have *greater protection from negligent hiring claims*. In a negligent hiring claim, an employer is presumed not to have notice of (1) records that have been sealed or expunged; (2) records about which employers may not inquire under Massachusetts anti-discrimination laws; and (3) records concerning crimes that the Department of Criminal Justice Information Services (DCJIS) may not lawfully disclose to an employer.

## **Enforcement Action**

In [June 2018](#), Massachusetts Attorney General Maura Healey announced that she had reached agreements with four national employers while also issuing warnings to 17 other Boston businesses accused of having violated the prohibition against criminal record inquiries on job applications. Some of these companies faced \$5,000 fines.

## **Next Steps for Employers**

Employers may want to take steps to ensure that their job applications and hiring forms comply with recent law, in particular, that their hiring forms include the statement above relating to expunged records. Employers may also want to ensure that all current employees who play a role in their hiring processes are aware of these changes and the law's prohibitions surrounding criminal history inquires.

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