

Massachusetts Adjusts Limits on Employer Inquiries into Job Applicants' Criminal History

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A provision in the Massachusetts criminal justice reform law signed by Governor Charlie Baker amends the state's restrictions on the questions employers may ask a job applicant regarding the applicant's criminal history during the hiring process. The new restrictions include an adjusted limitation on asking about misdemeanor convictions and a bar on asking about sealed or expunged criminal records.

The new restrictions go into effect on *October 13, 2018*, six months after April 13, 2018, the date Governor Baker signed the measure.

In 2010, Massachusetts became the second state in the nation (Hawaii was the first) to ban both public and private employers from requesting criminal record information on initial job applications. The Massachusetts "ban the box" provision was part of legislation enacted to reform the state's criminal offender record information system. For more on this, see our article, [Criminal Background Checks: What Employers Need to Know About Massachusetts' New CORI Law](#).

Current Law

Under Massachusetts law, employers are prohibited from asking for information about an applicant's criminal history on an "initial written employment application" (this is referred to as the "ban the box" provision).

After the "initial written employment application," Massachusetts employers are still restricted on the types of criminal history questions they may ask applicants. Massachusetts employers may not ask for information about the following types of criminal history:

1. An arrest, detention, or disposition regarding any violation of law in which no conviction resulted;
2. A first offense for any of the following misdemeanors: drunkenness, simple assault, speeding,

- minor traffic violations, affray, or disturbance of the peace; and
3. Any conviction of a misdemeanor where the date of conviction, or the completion of any period of incarceration resulting therefrom, 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.

Because these restrictions on criminal history questions are so specific, many employers use special, custom forms that describe these restrictions when asking permissible criminal history questions at a later date in the application process.

New Law

The new law changes the restrictions in two important ways.

First, the law adjusts the timeframes related to when an employer may seek information on a misdemeanor conviction. The new law states that employers may not ask for information about misdemeanor convictions (or incarcerations resulting therefrom) that occurred three or more years prior to the date of the employment application, unless the person has been convicted of any offense within the preceding three years. This has been reduced from the preceding five-year period.

Second, the law prohibits employers from asking applicants for information about a criminal record that has been sealed or expunged.

Following the latest amendments, Massachusetts employers that ask questions regarding criminal history after the initial written employment application as part of their hiring practices and procedures should plan to adjust these questions, if necessary, and ensure key employees in the hiring process are educated about the new limitations.

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