

Massachusetts Employers' Ability to Inquire into Job Applicants' Criminal History Further Curbed

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Employment, Labor, Workforce Management

Massachusetts employers should take note of a provision in the Massachusetts criminal justice reform law – signed into law last week – that amends the type and scope of questions an employer may ask an applicant about his or her criminal history following an “initial written employment application.”

Since 2010, Massachusetts has prohibited public and private employers from requesting criminal record information in a prospective employee’s “initial written employment application” (commonly known as a “ban the box” provision). Following receipt of an “initial written employment application,” Massachusetts employers were further prohibited from inquiring about (1) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted; (2) a first offense for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace (all classified as misdemeanors); or (3) any conviction for a misdemeanor where the date of conviction, or the completion of any resulting 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.

The new law, effective October 13, 2018, modifies one of these existing restrictions and adds yet another constraint. First, the law decreases the period in which an employer can ask about a misdemeanor conviction or a resulting incarceration from five to three years preceding the date of the employment application. In other words, an employer cannot ask an applicant questions about misdemeanor convictions/resulting incarcerations that occurred three or more years prior to the date of the employment application, unless the applicant was convicted of any offense within the preceding three years. Second, the law creates a blanket prohibition as to any and all inquiries about sealed or expunged criminal records. Consequently, these amendments afford expanded privacy and protection to candidates.

In light of these amendments, employers should revisit their hiring practices and procedures, and potentially provide supplemental training to those individuals involved in the hiring process.

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