
Changes to Massachusetts CORI System Affects Employers' Access and Use of Criminal Records in Hiring

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On August 6, 2010, Massachusetts Governor Deval Patrick signed legislation that makes significant changes to the state's Criminal Offender Record Information ("CORI") system. The new law limits most employers' ability to ask about an applicant's criminal background on an initial written application, creates a state-run database that will make criminal records available to employers online, and also prevents the disclosure of certain convictions to potential employers after a statutory time period has elapsed.

Under the new law, beginning November 4, 2010, most employers will be prohibited from using applications that inquire into an applicant's criminal record (there is an exception for employers – such as schools and companies in the financial services sector – who are prohibited by state or federal law from hiring a person who has been convicted of certain types of crimes). Employers are still allowed to ask about an individual's criminal history in later stages of the hiring process, as long as the inquiries are not included in the initial application.

As a trade-off for being prevented from inquiring into an applicant's criminal history on the initial application, beginning in February 2012, employers will have access to a new state-run CORI database that will make state criminal records available, for a fee, to all employers. This database will provide information only on an applicant's convictions or pending charges. The new law also mandates that, before an employer uses any of the CORI available in the database to screen out an applicant or to question the applicant about his or her criminal history, the employer must provide a copy of the criminal record information to the applicant. The new law does not address criminal history inquiries conducted by third parties, but it does encourage employers' use of the new state-run database by insulating them from certain negligent hiring claims if they rely on the CORI received from the database and make a hiring decision within 90 days of the receipt of the CORI.

Additionally, the new law changes what criminal records may be accessed. Specifically, records for most felony convictions will be sealed and no longer available in the database after 10 years and most misdemeanor convictions will be sealed after five years, provided that the individual does not commit any later offenses during the applicable timeframe. Convictions for murder, certain sex offenses and other crimes will never be sealed.

An employer who conducts five or more criminal background checks must maintain a written CORI policy that: (1) notifies the applicant of the potential adverse decision based on criminal record information; (2) provides a copy of the criminal record information and the policy to the applicant; and (3) provides the process of correcting a criminal record. Employers must discard criminal record information after seven years from the adverse hiring decision or the ending date of employment.

Employers should begin preparing for this new law by reviewing any existing initial job application forms (removing any questions regarding an applicant's criminal record) and CORI policies. Additionally, employers should train all employees involved with hiring to exercise caution about asking any questions related to an applicant's criminal history until the initial application process is complete.

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