CLIENT ALERT: Hiring Procedures Again Affected by Massachusetts Criminal System Reform – By Keith H. McCown and Allison B. Cherundolo

Massachusetts recently enacted "An Act Relative to Criminal Justice Reform." Effective October 13, 2018, among its many changes to the criminal justice system, the new law also imposes more restrictions on an employer's ability to inquire about criminal history during the hiring process.

This has broadly been known as the "ban the box" initiative. Many states have enacted hiring laws to ameliorate the effects of poverty and to increase employment opportunities for reformed offenders, by prohibiting employment applications that require the applicant to check a box about criminal history.

Massachusetts "banned the box" in 2010. As part of the Criminal Offender Record Information (CORI) Reform Act, the Massachusetts anti-discrimination statute was amended to prohibit employers from including criminal history questions in an initial written application form (with a few exceptions for certain types of jobs). M.G.L. c. 151B § 4(9 ½).

Long before 2010, Massachusetts employers were already prohibited from asking, even in interviews, about criminal records that were sealed. Also prohibited were questions about: "(1) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted"; (2) a first conviction for certain misdemeanors ("drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace"); or (3) a conviction for any misdemeanor where the date of conviction or completion of incarceration "occurred five or more years prior" to the date of application, unless there was an intervening conviction. M.G.L. c. 151B § 4(9).

After the initial written application (*e.g.,* during an interview), Massachusetts employers are permitted to ask about felony convictions and misdemeanor convictions that are not on the prohibited list, above.

Effective October 13, the new law imposes three more requirements requiring attention by Massachusetts employers.

- First, the allowable "look back" period for inquiring about misdemeanor convictions will shrink from five to three years from the date of the application.
- Second, employers will be prohibited from asking questions about criminal records that have been expunged.
- Third, to protect applicants who might provide information about expunged criminal records in response to otherwise proper hiring requests after the initial written application, any form seeking that information must display the following statement:*An applicant for employment*

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> *with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 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 may answer 'no record' to an inquiry herein relative to prior arrests, criminal court appearances, juvenile court appearances, adjudications or convictions.*

Employers should be taking steps to ensure compliance with these changes by the effective date of October 13, 2018.

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