

Client Alert

Update to Massachusetts “Ban the Box” Law Goes Into Effect Soon

“Ban the Box” legislation prohibits employers from asking about criminal history on job application forms. Massachusetts has amended its “Ban the Box” law. The amendments, which go into effect on **October 13, 2018**, have important implications for employers who seek information about criminal records directly from applicants during the application process.

Just to review, Massachusetts employers are prohibited from asking *any* questions about criminal history on an initial written job application form. After receiving the initial written application form, employers may ask an applicant if s/he has ever been convicted of a felony or if s/he has been convicted of *certain* misdemeanors within the *last three years*. (The prior law permitted employers to look back five years.) The employer may not ask about records that have been sealed or expunged. If an employer chooses to seek permissible criminal record information directly from the applicant, the employer must now include the following language on both any form given to job applicants as well as on any release executed by an applicant authorizing a background check:

“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’ 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.”

What steps should employers take? First, employers should review job application forms to make sure that they do not ask any questions about criminal history. Employers should then review pre-hire forms to make sure that the forms only ask permissible questions about criminal history and that the forms contain the exact language (cited above) required by the law. Employers should also make sure that all personnel involved in the hiring process understand the law regarding the request for criminal record information.

If you have any questions, please call us. In the meantime, we will continue to monitor events and issue further alerts as things develop.



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