

Massachusetts Update: Changes to Law on Criminal Background Checks Effective May 4, 2012

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Massachusetts employers will be faced with a host of new obligations affecting their ability to obtain and use criminal background information from applicants and current employees beginning May 4, 2012. The state's 2010 criminal offender record information ("CORI") law created a new method and database for employers to access criminal records, allowing many employers access to the database for the first time.

Significant new requirements going into effect on May 4th include:

1. **Written CORI Policy** – Employers who obtain CORI records generally will be required to have a written CORI policy that plainly describes its method of obtaining and using CORI information.
2. **New State Criminal Record Database** – All employers will have access to a state-run CORI database. The law creates certain "safe harbor" protections to encourage employer use of the database. Employers, however, still may obtain criminal background information from third-party vendors who obtain information through the CORI database or county checks.
3. **New Requirements for Obtaining CORI Information** – Regardless of whether an employer obtains CORI information directly or through a consumer reporting agency, each Massachusetts employer will have to comply with new rules to obtain CORI information. The new rules include an obligation to provide applicants and employees with copies of their CORI information and specific recordkeeping and destruction requirements.
4. **New Requirements for Tracking the Dissemination of CORI Information** – Employers who obtain CORI information generally will have to track its dissemination and maintain that information for auditing purposes.

The "ban the box" provision of the new law went into effect on November 4, 2010. It requires employers to remove all questions seeking information about an applicant's criminal record or criminal history on "initial written employment applications."

The law also authorizes the new Massachusetts Department of Criminal Justice Information Services ("DCJIS") to create regulations, which may include additional requirements for the written CORI policy. DCJIS has published proposed CORI regulations and announced a public hearing on the regulations on March 30, 2012.

We will provide additional information after we complete our analysis of the proposed regulations.

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