

CLIENT ADVISORY

August 20, 2010

New CORI Reform Law Limits Information Available to Employers¹

On August 6, 2010, Governor Patrick signed the Criminal Offender Record Information (“CORI”) reform legislation into law. These changes affect how and when employers do criminal background checks on prospective, or current, employees. One of the most significant changes is that an employer is no longer permitted to ask an applicant about criminal convictions on the “initial written application form,” with some limited exceptions that are detailed below. Other than the provision dealing with the “initial written application form” which has an effective date of November 4, 2010, the new CORI law goes into effect February 6, 2012.

This advisory is intended to provide you with the highlights of the new CORI reform law. If you have additional or more specific questions, please do not hesitate to contact one of our Labor and Employment attorneys.

EMPLOYERS NO LONGER PERMITTED TO ASK ABOUT CRIMINAL HISTORY IN THE INITIAL WRITTEN APPLICATION

- Employers may no longer ask questions about an applicant’s criminal record in the “initial written application” stage of the hiring process. This does not apply to employers or to specific job positions for which a federal or state law creates a presumptive disqualification based upon conviction for particular offenses. This portion of the new CORI law goes into effect November 4, 2010, so employers should review their current applications for employment to see if it is in compliance.
- If the employer wants to consider the applicant's criminal record, then the employer must receive the applicant's signed authorization before the employer can request the information.
- Employers may still consider an applicant’s criminal history at a later stage, however the applicant must be provided with a copy of his/her CORI report before being questioned about it, and also before any potential adverse decision is made on the basis of the CORI report. This is true regardless of whether the employer obtained the CORI report from a third party source, or, the newly created Department of Criminal Justice Information Services (which replaces the Criminal History Systems Board).

¹ ***The information in this notice is provided for informational purposes only and should not be considered legal advice.***

- Failure to provide an applicant with a copy of his/her CORI report prior to questioning, or prior to taking any adverse employment action, may subject the employer to an investigation, fines and sanctions.

NEW LIMITS ON INFORMATION CONTAINED IN CORI REPORTS

- The Department of Criminal Justice Information Services will make available information regarding: 1) felonies less than 10 years old (includes termination of period of incarceration); 2) misdemeanors less than 5 years old (includes termination of period of incarceration); and 3) pending criminal charges (includes cases continued without a finding, unless the case has already been dismissed). If there are pending criminal charges on an individual's CORI report, then all prior convictions will be reported.
- Convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses will remain on an individual's record permanently.

WRITTEN POLICY REQUIRED FOR EMPLOYERS DOING FIVE OR MORE BACKGROUND CHECKS PER YEAR

- Employers who conduct five or more background checks per year must maintain a written policy that informs potential applicants of the following: 1) that an adverse decision may result based upon the CORI report; 2) that the employer will provide a copy of the CORI report and the policy to the applicant; and 3) that it will provide information to the applicant concerning the process for correcting a criminal record.
- The new CORI law does not prohibit an employer from making an adverse decision on the basis of an applicant's criminal history.

OTHER IMPORTANT CHANGES

- Employers are protected from discrimination claims arising from adverse employment decisions that resulted from erroneous information requested and received from the Department of Criminal Justice Information Services. Employers are also protected from claims of negligent hiring for relying solely on the CORI report, and not conducting additional background checks. However, this protection is limited to decisions within 90 days of obtaining the CORI report from the Department, and that the employer followed proper procedures for verification of the information in the CORI report.
- An applicant for employment will now be able to see the identity of the organization or person that requested their CORI report, the date of the query, and the certified purpose of the query.

- An employer may only disseminate information from an individual’s CORI report to people within the organization that “need to know” the information. The employer must maintain a dissemination log for the period of one year which includes: 1) the name of the subject; 2) the individual’s date of birth; 3) date of dissemination; 4) the name of the person to whom it was disseminated; and 5) the purpose of the dissemination.
- Employers may not keep a copy, electronic or otherwise, of the requested CORI for more than 7 years after the date of last employment, or date of the employment decision regarding the applicant.

SPECIAL CONSIDERATIONS FOR SCHOOL DISTRICTS

- School committees and superintendents will continue to have access to all criminal offender record information pursuant to G.L. c. 71 §38R, and therefore are not subject to the limits on CORI information reported.
- All public school districts must implement a policy and discipline code to address teen dating violence in public schools. The policy shall clearly state that dating violence will not be tolerated and will include guidelines for addressing any alleged incidents. Topics in the policy must include: 1) defining the issue of teen dating violence; 2) recognizing warning signs; and 3) identifying issues of confidentiality, safety and appropriate legal school-based interventions.

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