



e-Alert: Massachusetts Amends "Ban-the-Box" Law Effective October 13, 2018

Background

On April 13, 2018, Massachusetts Governor Charlie Baker signed two laws, [An Act Implementing the Joint Recommendations of the Massachusetts Criminal Justice Review](#) and [An Act Relative to Criminal Justice Reform](#). He also signed a third, separate bill, [An Act Building on Criminal Justice Reform](#), to amend the state's Ban the Box law, which restricts questions employers may ask job applicants about their criminal history during the hiring process.

Changes to the law

Effective October 13, 2018:

- Employers cannot ask applicants about misdemeanor convictions that are three or more years old; previously, the time period was five or more years.
- Employers cannot ask applicants about criminal records that have been sealed or expunged.
- Any form used by an employer that seeks information concerning an applicant's criminal history must include the following statement:
"An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 of the General Laws 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 of the General Laws may answer 'no record' to an inquiry herein relative to prior arrests, criminal court appearances, juvenile court appearances, adjudications or convictions."
- Employers will have additional legal protections against potential negligent-hiring or negligent-retention claims based on criminal history to which they did not have access to; meaning an employer will be presumed not to have access to criminal records (i) that have been sealed or expunged, (ii) about which the employer is legally prohibited from inquiring, or (iii) that the Massachusetts Department of Criminal Justice Information Services cannot lawfully disclose to an employer.

Employer next steps

1. Work with your background check providers to ensure they are using updated pre-hire forms that include the reduced misdemeanor time period and the mandatory statement regarding expunged and sealed records.
2. Review employment applications and existing hiring policies and make any necessary modifications to ensure they are compliance with the law, as amended.
3. Ensure that all supervisors, managers, and human resources employees are trained on these new requirements.

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