

NORRIS, MURRAY & PELOQUIN, LLC

Legal Counsel to Employers and Schools

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Speaking Engagements

MMA Annual Meeting January 18-19, 2019

Leo Peloquin and Melissa Murray will present Friday at 2:00 p.m. The topic: "Labor Law Update: New Laws, Recent Cases and Agency Decisions." Unable to attend? Call the office and request a copy of our materials.



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WE MOVED

We are now across the park at 315 Norwood Park South.



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Tougher Than Ever To Use Criminal History To Reject Applicant For Employment

The already restrictive Massachusetts law limiting the use of criminal offender record information ("CORI") in the hiring process has become more restrictive. The "look back" for criminal misdemeanor convictions is now three (3) years instead of five (5), and Employers cannot ask about sealed or expunged records at all. Here is a refresher on Employer dos and don'ts when it comes to using CORI in hiring.

- "Have you ever been convicted of..." questions are prohibited and should not be on your employment application. This was a result of the "ban the box"/fair chance law enacted several years ago;
- CORI should not be considered until the end of the process for reviewing an applicant for employment---after there is a determination as to whether the applicant was otherwise qualified for the position;
- It is still legal to consider felony convictions with a disposition date within the last ten (10) years, misdemeanor convictions with a disposition date within the last three (3) years and pending criminal charges, which includes cases that have been continued without a finding and have not yet been dismissed;
- The above restrictions apply only to inquiries to the applicant, including a request to authorize a CORI check. An Employer still has the right to obtain and consider CORI, including an arrest, from other lawful sources.

Bear in mind that even a criminal record that an Employer can ask about, and consider, does not give the Employer the right to automatically disqualify an applicant. An Employer must be able to give specific reasons beyond the mere existence of the record, including the relevance of the record to the position sought, the nature of the work to be performed, the amount of time since the conviction, the age of the applicant at the time of the offense, the seriousness and specific circumstances of the offense, the number of the offense, any relevant evidence of rehabilitation or lack thereof, and whether the applicant has pending charges. No matter the source of the CORI, the Employer must also tell the applicant what specific information formed the basis for the adverse decision and its source and give the applicant an opportunity to dispute the accuracy of the information.

Any Employer who conducts five (5) or more criminal background investigations per year that include obtaining CORI must have a written CORI Policy that includes the above provisions and a copy of the policy must be provided to the affected applicant.

Contact your NMP attorney if you have any questions regarding the above or to discuss your current CORI Policy or hiring practices.