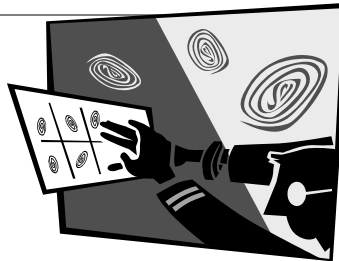


# CLIENT ADVISOR

January, 2013

## Governor Signs Background Check Bill

Massachusetts has joined most other states in requiring educators in public and private schools, and employees in state-licensed child-care programs, to undergo national background checks and fingerprinting. Previously only state Criminal Offender Record Information (“CORI”) checks were required.



The law is effective September 1, 2013 for new employees, and all current employees must be checked by September 1, 2016. The law includes a fee schedule based upon whether the employee is required to be licensed by the Department of Elementary and Secondary Education (“DESE”).

A provision of the law allows employers to reimburse applicants for all or part of the fee “on grounds of financial hardship.”

More information is available on our website at: [www.collinslabor.com](http://www.collinslabor.com).

## SPEAKING ENGAGEMENTS

On January 25, 2013, Phil Collins presented his annual “Labor Law Update” at the MMA Annual Meeting in Boston, MA.

If you were unable to attend the MMA Annual Meeting or Phil’s panel, and would like a copy of the handout distributed as part of Phil’s presentation, please call the office or email Terri Brooks at [tbrooks@collinslabor.org](mailto:tbrooks@collinslabor.org)

## Criminal History & Public Employment

The recent background check mandate for educators seems to be at odds with the so-called “ban the box” legislation passed in 2010 prohibiting employers from asking any criminal history questions on their initial application forms. G.L. c. 151B, §4(9½).

Except for police officers, there is no automatic disqualification for felonies, *Benevento v. Springfield Fire Dep’t*, 25 MCSR 537 (2012), but even a decades old criminal offense can justify a decision not

to hire under civil service. *Ferrara v. Dep’t of Correction*, 25 MCSR 375 (2012).

For civil service positions it is important to give the applicant an opportunity to address prior criminal behavior and to follow-up to determine the truthfulness of any claims of justification or mitigation. The thoroughness of the background check will help defend any appeal by candidates bypassed by others lower on the eligibility list.



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## NOTEWORTHY DECISION

When a Town and a union have written ground rules for successor contract bargaining that state all tentative and final agreements would be in writing, there is no merit to a union’s claim that the Town repudiated an alleged verbal agreement. The Town of Hanson recently prevailed in this case at the Division of Labor Relations (“DLR”). Besides finding there could not have been a verbal agreement, the DLR found that the Town Administrator’s comment about “liking” the proposal did not manifest an agreement to a successor contract on those terms; rather, it indicated that he liked the proposal. The Town was represented by Attorney Leo J. Peloquin.

