

MASSACHUSETTS MUNICIPAL PERSONNEL ASSOCIATION

ANNUAL LABOR RELATIONS SEMINAR

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AMENDMENTS TO CORI AND PERSONNEL RECORDS STATUTES²

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**AMENDMENTS TO CORI
AND PERSONNEL RECORDS STATUTES**

CORI AMENDMENTS

Effective November 4, 2010:

- Employers will be prohibited from requesting criminal record information on “initial written applications.”
 - This prohibition does not apply when: (1) the applicant is applying for a position for which federal or state law creates a “mandatory or presumptive disqualification” based on conviction of certain criminal offenses; or (2) the applicant is applying for a position for which federal or state law creates an obligation not to employ persons who have been convicted of certain criminal offenses.
 - Other G.L. c. 151B prohibitions still apply. See MCAD Fact sheet.

Effective May 4, 2012:

- An employer in possession of an applicant’s criminal offender record information, regardless of the source, must provide the record to the applicant before questioning him/her about the record or making an adverse decision based upon the record.
- Employers conducting five or more criminal background investigations annually must maintain a written criminal offender record information policy. The policy must state that the employer will: (1) notify applicants of a potential adverse decision based upon criminal record information; (2) provide a copy of the criminal record information and the policy to applicants; and (3) provide applicants with information concerning the process to correct a criminal record.
- Felony convictions older than 10 years and misdemeanor convictions older than 5 years will not be accessible to employers. Employers will, however, have access to pending criminal charges and cases that have been continued without a finding until dismissal of the case. Further, information concerning convictions for murder, manslaughter, and sexual offenses will remain permanently available.
 - Statute provides for a different level of access for the following:
 - “Criminal justice agencies” may obtain all CORI for the performance of their “criminal justice duties.”
 - Housing authorities, Department of Telecommunications & Energy, Department of Children and Families, community-based settings for elderly, IV-D agencies, long term care facilities, assisted living facilities, continuing care facilities, Department of Early Education,

operators of camps for children, activities and programs for children under 18, school committees and superintendents that have contracted with taxicab companies, Commissioner of Banks, children's camps or schools employing someone for a climbing wall, victim of a crime, witness or a family member of a homicide victim, Motor Vehicle Insurance Rating Board, Department of Early Education and Care, District Attorneys, school committees or superintendents, Massport, DSS, Racing Commission, Courts, and the Pension Fraud Unit.

- General public access will be limited to the following: (1) convictions for any felony punishable by a term of imprisonment of 5 years or more; (2) information pertaining to custody status where at the time of the request the individual is serving a sentence of incarceration or probation or is under the custody of the parole board; (3) felony convictions for 2 years following the disposition; and (4) misdemeanor convictions for one year following the disposition.
- Members of the public "who are in fear of an offender" may obtain advance notification of their release from custody.
- Commissioner of the Department of Criminal Justice Information Services (the "DCJIS") may allow broader access for certain requestors if it "serves the public interest."
- Individuals will be able to track who requested criminal record information by obtaining a copy of the log of queries for criminal record information pertaining to each individual. Individuals will also have the right to inspect their CORI on file. The DCJIS will publish guidelines on how to correct.
- Employers may only disseminate criminal offender record information at the employee's or applicant's request or to individuals within its business that have a "need to know." In the event information is disseminated, the employer must maintain a "secondary dissemination log" for a period of one year following dissemination indicating: (1) the name of the subject; (2) date of birth of the subject; (3) date of dissemination; (4) name of person to whom it was disseminated; (5) the purpose of the dissemination.
- Unless otherwise provided by law or court order, employers are prohibited from maintaining criminal offender record information for more than seven years after the last date of employment or the date of the final decision not to hire the applicant.
- Employers relying upon criminal offender record information provided by the DCJIS will enjoy certain protections from liability for employment decisions made within 90 days of receiving and verifying criminal offender record information. For such decisions, employers will not be liable for: (1) claims of negligent hiring by reason of relying solely upon the information provided by the DCJIS and not performing additional background checks; or (2) claims of discriminatory employment practices

for failure to hire a person based upon erroneous criminal offender record information provided by the DCJIS.

Administrative changes:

- The newly created Department of Criminal Justice Information Services takes over the responsibilities of maintaining and disseminating criminal offender record information. The criminal history systems board will exist in a different form with less responsibilities.
- The DCJIS is tasked with creating a new database accessible on the internet for the collection, exchange, dissemination, and distribution of among other things, CORI.
- A criminal review board within the DCJIS will be created. The review board is tasked with hearing complaints and investigating incidents alleging violations of the statute. The board can impose civil fines of up to \$5,000 for each knowing violation.
- Criminal penalties for violations of the statute are also increased in range from \$5,000 to \$50,000.

PERSONNEL RECORDS

Effective August 1, 2010:

- Employers must now notify an employee within ten days of placing information in the employee's personnel record that "is, has been used or may be used, to negatively affect the employee's qualification for employment, promotion, transfer, additional compensation or ... subject [the employee] to disciplinary action."
- The amendment further limits the number of times an employee may request his or her personnel record in a calendar year to two, except for instances where the request is made as a result of receiving notice of negative information placed in his or her personnel file.

Note there is no private right of action for violations of the statute. Potential for fines ranging from \$500 to \$2,500.

The Official Website of the Massachusetts Commission Against Discrimination (MCAD)

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Fact Sheet: Discrimination on the Basis of Criminal Record

Massachusetts General Laws Chapter 151B, Section 4; 804 CMR 3.01

- ① It is illegal for an employer to ask certain questions about a job applicant's or employee's criminal record. Employers may not ask about, maintain a record of, or base any employment decision on the following information if they have requested it:

Arrests or prosecution that did not lead to a conviction;

A first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace;

Misdemeanors where the date of conviction or the end of any period of incarceration was more than five years ago, provided that there have been no subsequent convictions within those five years;

Any record of a court appearance which has been sealed under state law;

Anything pertaining to juvenile record, including delinquency and child in need of services complaints, unless the juvenile was tried as an adult in Superior Court.

An employer may not take action against an applicant or employee for answering an unlawful question untruthfully.

- ② An employer may ask:

Have you ever been convicted of a felony?

Within the last five years have you been convicted of, or released from incarceration for a misdemeanor which was not a first offense for drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace?

IT IS ALSO ILLEGAL FOR AN EMPLOYER TO REQUEST FROM AN APPLICANT OR EMPLOYEE A COPY OF A PROBATION OR ARREST RECORD,* OR TO ASK AN APPLICANT OR EMPLOYEE TO SIGN A RELEASE PERMITTING ACCESS TO SUCH INFORMATION.

** An employer that applies for and is granted access to criminal record information by the Massachusetts Criminal History Systems Board under the Criminal Record Information Act (CORI) may obtain some information on applicants' employees' criminal records. Access to information under CORI is limited to that which is necessary to perform the relevant criminal justice or statutory duties.*

General Laws of Massachusetts

General Laws of Massachusetts
PART I ADMINISTRATION OF THE GOVERNMENT
TITLE XXI LABOR AND INDUSTRIES
CHAPTER 149 LABOR AND INDUSTRIES
PRIVATE EMPLOYMENT.

G.L.c. 149, § 52C. Personnel records; review by employee; corrections; penalty.

****Update Notice: This section has been amended by Chapter 240 of 2010**

Section 52C. As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings: -

"Employee", a person currently employed or formerly employed by an employer; provided, however, that for purposes of this section, persons who are employed, or were formerly employed, by a private institution of higher education in positions which may lead to tenure, are tenured, or which involve responsibilities similar to those in tenure-track positions, shall not be considered employees.

"Employer", an individual, corporation, partnership, labor organization, unincorporated association or any other legal business, public or private, or commercial entity including agents of the employer.

"Personnel record", a record kept by an employer that identifies an employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action. A personnel record shall include a record in the possession of a person, corporation, partnership or other association that has a contractual agreement with the employer to keep or supply a personnel record as provided in this section. A personnel record shall not include information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of such other person's privacy. Without limiting the applicability or generality of the foregoing, all of the following written information or documents to the extent prepared by an employer of twenty or more employees regarding an employee shall be included in the personnel record for that employee: the name, address, date of birth, job title and description; rate of pay and any other compensation paid to the employee; starting date of employment; the job application of the employee; resumes or other forms of employment inquiry submitted to the employer in response to his advertisement by the employee; all employee performance evaluations, including but not limited to, employee evaluation documents; written warnings of substandard performance; lists of probationary periods; waivers signed by the employee; copies of dated termination notices; any other documents relating to disciplinary action regarding the employee. A personnel record shall be maintained in typewritten or printed form or may be handwritten in indelible ink.

Any employer receiving a written request from an employee shall provide the employee with an opportunity to review his personnel record

within five business days of such request. The review shall take place at the place of employment and during normal business hours. An employee shall be given a copy of his personnel record within five business days of submission of a written request for such copy to his employer.

If there is a disagreement with any information contained in a personnel record, removal or correction of such information may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining the employee's position which shall thereupon be contained therein and shall become a part of such employee's personnel record. The statement shall be included when said information is transmitted to a third party as long as the original information is retained as part of the file. If an employer places in a personnel record any information which such employer knew or should have known to be false, then the employee shall have remedy through the collective bargaining agreement, other personnel procedures or judicial process to have such information expunged. The provisions of this section shall not prohibit the removal of information contained in a personnel record upon mutual agreement of the employer and employee for any reason.

An employer of twenty or more employees shall retain the complete personnel record of an employee as required to be kept under this section without deletions or expungement of information from the date of employment of such employee to a date three years after the termination of employment by the employee with such employer. In any cause of action brought by an employee against such employer of twenty or more employees in any administrative or judicial proceeding, including but not limited to, the Massachusetts Office of Affirmative Action, the Massachusetts Commission Against Discrimination, Massachusetts Civil Service Commission, Massachusetts Labor Relations Commission, attorney general, or a court of appropriate jurisdiction, such employer shall retain any personnel record required to be kept under this section which is relevant to such action until the final disposition thereof.

If an employer of twenty or more employees elects to have a written personnel policy regarding the terms and conditions of employment, such personnel policy, as the same may be amended from time to time, shall be continuously maintained at the office of such employer where personnel matters are administered.

Whoever violates the provisions of this section shall be punished by a fine of not less than five hundred nor more than twenty-five hundred dollars. This section shall be enforced by the attorney general.

Massachusetts Acts

Chapter 240 of 2010.

AN ACT RELATIVE TO ECONOMIC DEVELOPMENT REORGANIZATION.

SENATE No. 2582

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith a business-friendly environment that will stimulate job growth and improve the ease with which businesses can operate in the markets they serve, and to coordinate economic development activities funded by the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. To provide for a program of infrastructure development and improvements, the sums set forth in section 2B for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds and approval thereof.

SECTION 2B.

1100-7400 For the recapitalization of the Massachusetts Growth Capital Corporation.....
\$20,000,000.

6001-0817 For the recapitalization of the grant program to provide for commercial and residential transportation and infrastructure development, improvements and various capital investment projects under the Growth Districts Initiative established by the executive office of housing and economic development; provided, that the secretary of housing and economic development, in consultation with the secretary of the Massachusetts Department of Transportation, shall adopt, amend or continue regulations or guidelines regarding this program; provided further, that annually not later than December 31, the secretary of housing and economic development shall issue a written report to the clerks of the senate and house of representatives, the chairs of senate and house committees on bonding, capital expenditures and state assets, the chairs of the joint committee on transportation, the chairs of the joint committee on economic development and emerging technologies, the chairs of the joint committee on state administration and regulatory oversight and the chairs of the senate and house committees on ways and means, which shall include detailed descriptions of infrastructure improvement projects funded under this program and of all funds expended for this purpose, including, but not limited to, all information required for projects under section 25 of chapter 304 of the acts of 2008..... \$50,000,000.

winery product not produced by or for the winery and sold under the winery brand name. All retail sales shall be made on the winery premises, except where a winegrower obtains additional licenses for the sale of wine to consumers at additional locations off the winery premises at locations authorized by a license issued pursuant to sections 15 and 15F.

SECTION 148. Section **52C of chapter 149** of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the fifth paragraph and inserting in place thereof the following paragraph:

An employer shall notify an employee within 10 days of the employer placing in the employee's personnel record any information to the extent that the information is, has been used or may be used, to negatively affect the employee's qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action. An employer receiving a written request from an employee shall provide the employee with an opportunity to review such employee's personnel record within 5 business days of such request. The review shall take place at the place of employment and during normal business hours. An employee shall be given a copy of the employee's personnel record within 5 business days of submission of a written request for such copy to the employer. An employer shall not be required to allow an employee to review the employee's personnel record on more than 2 separate occasions in a calendar year; provided, however, that the notification and review caused by the placing of negative information in the personnel record shall not be deemed to be 1 of the 2 annually permitted reviews.

SECTION 149. Section **1H of chapter 164** of the General Laws, as so appearing, is hereby amended by striking out the definition of the word "department" and inserting in place thereof the following definition:-

"Department", the department of public utilities.

SECTION 150. Section **14 of chapter 167** of the General Laws, as so appearing, is hereby amended by striking out, in line 22, the words "and 30" and inserting in place thereof the following words:-, 30 and 30A.

SECTION 151. Said section **2 of said chapter 167F**, as so appearing, is hereby amended by inserting after paragraph 30 the following paragraph: -

30A. To participate in the activities of the Massachusetts Growth Capital Corporation created under chapter 40W by making capital available to the corporation by making an investment or deposit in or grant to said corporation, an affiliate or subsidiary of said corporation or any fund managed by said corporation.

SECTION 152. The first paragraph of section **168 of chapter 175** of the General Laws, as so appearing, is hereby amended by inserting after the sixth sentence the following sentence:

Any insurance policy procured under this section shall contain the following disclosure notice to the policyholder: This policy is insured