



347 West Grove Street; Middleboro, MA 02346 tel. 508-947-0600 fax 508-947-0699 www.SaferPlacesInc.com

Massachusetts CORI Reform A National Trend?

If you aren't a Massachusetts employer, you may be tempted to skip this article. However, if you ever hire someone who currently or has previously resided in Mass., you should be aware that this law will limit what information you will be able to obtain from a Mass. CORI (Criminal Offender Record Information) search. Proponents of this new law argue that people with criminal records find it very difficult to obtain employment and that it is in society's best interest to help them find good jobs. Without a job, they are more likely to reoffend. Most people will likely agree with this sentiment but the flip side is that employers still have a desire and even an obligation to create safe work environments for their employees, customers and the public. Withholding information from them would seem to handcuff them in this endeavor.

We already have pertinent laws to protect people with a criminal history past but who now seek to "straighten out and fly right." At the federal level, The EEOC prohibits the denial of employment solely on the basis of a criminal record. The employer must show the relevance of the crime to the position being sought (a shoplifter working in retail or a pedophile in a daycare center). And the FCRA prohibits background check companies from reporting criminal charges that did not result in convictions after 7 years. However, with CORI reform, Massachusetts has added additional protections for job applicants here in the Commonwealth. A good thing? Well, consider the facts, and let me know what you think.....

If you are a Mass. employer, here's a summary of what the law means to you:

- You can no longer ask about criminal convictions on an initial application. This so called "ban the box" clause prohibits a question about criminal history from appearing on your employment applications. This is designed to stop employers who may have been tempted to put all applications into 2 piles: those with convictions and those without. You may still inquire about past convictions later on in the process, perhaps during an interview, but cannot have a question asking about any criminal violations on the employment application. (There are narrow exceptions to this provision. For example, if there is a statute that prohibits a particular employer from hiring a convicted felon such as a licensed security company or a school, they can still ask.)
- When obtaining CORI, the report will no longer include felony convictions that have been closed for more than 10 years or misdemeanors that have been closed for more than 5 years. Exceptions include convictions for homicides and level 2 and 3 sex offenders.
- CORI will no longer report cases that have been dismissed, continued without finding or ended in acquittal.



347 West Grove Street; Middleboro, MA 02346 tel. 508-947-0600 fax 508-947-0699 www.SaferPlacesInc.com

- Applicants will be able to obtain a log listing the names of persons who requested his or her CORI, the date of and reason for the request.
- Before taking adverse action based on a CORI report, the employer must provide the applicant with a copy of the report. Note: current Mass. CORI regulations require that an applicant be given a copy of their CORI report if it contains any information except “No Record,” even if no adverse action is taken. And federal law requires a copy of any consumer report be given to an applicant prior to adverse action being taken if it is based in whole or in part on that report.
- CORI records must be destroyed within 7 years of an employee leaving your company or 7 years after an unsuccessful candidate has been rejected.
- Employers who conduct 5 or more background investigations per year must have a written policy. Here again, current CORI regulations already require this.
- The law protects an employer from liability for failure to hire based on erroneous information in a candidate’s CORI. It also shields an employer from negligent hiring liability by reason of relying solely on CORI records and not performing additional criminal history research prior to hiring an individual.

I think that last bullet item needs clarification as it seems to be telling employers if they rely solely on CORI records (which will have Mass. conviction data redacted after 5 or 10 years) they are immune from civil actions for negligent hiring. Since CORI contains only Mass. criminal records, what if a person has only lived in the state for a short period of time? Should an employer not research potential criminal records in the previous state(s) where the applicant resided in order to claim immunity from liability here in MA?

Effective dates for the new law are: November 4, 2010 regarding the prohibition on asking about criminal records on an initial application. The remainder of the provisions in the new law take effect February 6, 2012.

Safer Places, Inc. is a CORI certified agency and currently obtains CORI on behalf of our CORI certified clients. We are available to answer your questions and will keep everyone apprised of these and other changes as we become aware. Although we cannot provide legal advice, we are available to answer general questions you may have about compliance with this new law.

The “Ban the Box” provision in the CORI reform law seems as though it may be the start of a trend. There is currently a movement in Washington DC started by a group representing ex-offenders to get a “ban the box” law passed there. Employers should check state regulations in all states where they hire employees to see if there are similar provisions in those states. I believe CT, MN, NM and HI all have similar provisions but they currently apply only to state jobs. Several cities have also adopted similar provisions. While I’m not yet aware of any states where the law applies to private employers as it does here in MA, I am hearing that several states have at least considered it and it is possible legislation could have passed in some places without our knowing it.



347 West Grove Street; Middleboro, MA 02346 tel. 508-947-0600 fax 508-947-0699 www.SaferPlacesInc.com

In my opinion, this is still an important question to ask during the hiring process. Massachusetts allows employers to ask, but just not on the initial application. If any state in which you operate has a similar law (or passes one in the future) I would advocate that interviewers should be trained to ask during the interview (assuming this is permitted as it is in Mass.) and make note of the answer. If an applicant discloses a criminal history at this point, I would ask him/her to write a brief summary of the charges and explain any extenuating circumstances plus any rehabilitation he/she may have undergone. This can then be forwarded to your HR Dept. who can review all of the circumstances involved and determine if they fall within company hiring guidelines for the position being sought.

Article by:

David C. Sawyer, CPP
President
Safer Places, Inc.

Contact Safer Places, Inc.
www.SaferPlacesInc.com
Info@SaferPlacesInc.com
508-947-0600