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New Legislation Affecting Our Clients With Offices in Massachusetts

Earlier this month, Governor Deval Patrick signed into law several pieces of legislation with an immediate effect on Massachusetts employment practices.

Massachusetts employers are already aware that state law imposes requirements on employers of twenty or more employees to maintain personnel files containing certain specified documents and providing, among other things, procedures for employees to review their personnel files and include written statements rebutting information with which they disagree. This law has been amended effective August 1, 2010 to require employers to notify employees within ten days of information placed in their personnel file that may lead to discipline or otherwise negatively affect their employment. The employee's right to receive a copy of his or her personnel file upon written request is now limited to twice per calendar year, excluding reviews triggered by a required notice of negative information. Although individual employees cannot sue for violation of this law, the State Attorney General, which is charged with enforcement, may seek fines ranging from \$500 to \$2500 for each violation.

Another piece of legislation further restricts employers' ability to inquire about applicants' criminal backgrounds under state law. Massachusetts already prohibits employers from including requests for information on application forms, or otherwise discriminating against an individual, concerning (1) arrests, detentions, or dispositions that did not result in convictions; (2) first convictions for drunkenness, simple assault, traffic violations, or disturbing the peace; or (3) any misdemeanor conviction when the applicant had no felony or misdemeanor convictions or periods of incarceration within the past five years. This prohibition will be expanded effective November 4, 2010. Starting on that date, employment applications may not inquire about any criminal record history unless a conviction for one or more types of criminal offense would disqualify the applicant under federal or state law or regulation, or unless a law or regulation bars the employer (or its affiliate) from employing a convict in one or more of its positions. Employers remain permitted, as long as consistent with the preexisting law, to ask about felony convictions and certain misdemeanor convictions during interviews.

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Also be aware that other changes to Massachusetts laws regarding criminal histories, which take effect February 6, 2012, create a new statutory provision requiring the employer to provide current or prospective employees with a copy of criminal offender record information before questioning them about it.

If you have any questions or need further guidance to ensure your business complies with these legal developments, please contact John Keil at 212-758-7862.

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