

Special Announcement to all Massachusetts employers :

The State of Massachusetts passed a law amending the Massachusetts Fair Employment Practices Law, M.G.L. Chapter 151B, §4, which prohibits employers from asking questions of job applicants about arrests that do not result in convictions and convictions for certain misdemeanors.

The law makes the following an unlawful practice:

- 1) For an employer, himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred five or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within five years immediately preceding the date of such application for employment or such request for information.
- 2) For an employer to request on its initial written application form criminal offender record information; provided, however, that except as otherwise prohibited by subsection 9, an employer may inquire about any criminal convictions on an applicant's application form if: (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses; or (ii) the employer or an affiliate of such employer is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal offenses.

This law will require a review of the hiring process in place, including the waiver that all applicants must complete, and may require changes to that process. Justifacts recommends that you consult with your legal department to determine what changes, if any, need to be made to your hiring process in order to comply with this law. Additionally, Justifacts can provide a modified waiver that includes language regarding part 1 of this law.

The complete text of the legislation can be found here:

<http://www.malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter151b/Section4>

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