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COUNSELLORS AT LAW

**EMPLOYMENT LAW ALERT**  
**NEW REQUIREMENTS FOR MASSACHUSETTS EMPLOYERS**

**CRIMINAL BACKGROUND INFORMATION REQUESTS**  
**(EFF. OCTOBER 13, 2018)**

As part of a broad criminal justice reform bill that became law in Massachusetts earlier this year, employers must include new language on any forms requesting criminal background information from employees or applicants in Massachusetts. Effective October 13, 2018, any such form must contain the following statement (in addition to other required statements regarding not disclosing offenses as a minor and sealed records):

“An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 of the General Laws may answer ‘no record’ with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with a record expunged pursuant to section 100F, section 100G, section 100H or section 100K of chapter 276 of the General Laws may answer ‘no record’ to an inquiry herein relative to prior arrests, criminal court appearances, juvenile court appearances, adjudications or convictions.”

Notwithstanding the repetitive language, both sentences should be included exactly as they appear in the statute.

Also, the timeframe for which employers are allowed to ask applicants and employees about prior convictions of misdemeanors has been shortened, from five years to three years. Thus, a permissible question (which still may not be asked in the initial written application, but may be asked later in the application process) now would be:

“Within the past three years, have you been convicted of, or completed a period of incarceration due to a conviction of, a misdemeanor (other than first conviction of drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace)?”

**NEW FCRA FORM**  
**(EFF. SEPTEMBER 21, 2018)**

Employers that use a credit reporting agency to gather background information (including criminal and credit reports) on applicants and employees must follow the process set out in the Federal Fair Credit Reporting Act (“FCRA”), which includes providing the applicant or employee certain mandatory forms. One of the forms titled, “A Summary of Your Rights Under the Fair Credit Reporting Act,” was updated effective September 21, 2018. The new form is available for download (in multiple languages) at: <https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-issues-updated-fcra-model-disclosures/>.

**UPDATE YOUR NONCOMPETITION AGREEMENTS**  
**(EFF. OCTOBER 1, 2018)**

As covered in Manchel & Brennan’s August 2018 Employment Law Alert, the new Massachusetts Noncompetition Agreement Act establishes strict requirements for noncompetition agreements entered into on or after October 1, 2018. If you have not already done so, any noncompetition agreement used in Massachusetts must be updated to comply with the new requirements.

Please contact Manchel & Brennan if we can be of assistance with these or any other employment law issues.

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