



OFFICE OF ATTORNEY GENERAL

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A BRIEF GUIDE FOR EMPLOYERS THAT USE CRIMINAL RECORDS IN HIRING

Job applicants with criminal records often face discriminatory barriers to securing employment – a key aspect of productive participation in our society and a critical pathway to economic security – in spite of laws which proscribe certain hiring practices. This guide provides employers an overview of some of the relevant laws and regulations that apply to the use of criminal history information in hiring. It does not address all potentially relevant laws or regulations, and information provided in this guide does not constitute legal advice or a legal opinion of the Attorney General.

INITIAL JOB APPLICATIONS

- Most employers are prohibited from asking about an applicant’s criminal history on an initial job application. There are two very limited exceptions:
 - If the applicant is applying for a job for which any federal or state law creates mandatory or presumptive disqualification based on a conviction for certain types of criminal offenses (e.g. a child care provider position at a day care); or
 - If the employer is subject to an obligation, imposed by federal or state law, not to employ persons, who have been convicted of certain types of criminal offenses (e.g. banks).
- If you believe one of these exceptions might apply, you should consult with a lawyer before adding a criminal history question to an initial job application.

INTERVIEWS AND LATER STAGES OF THE HIRING PROCESS

- Employers are never permitted to require an applicant to provide a copy of their own criminal history information, nor are they permitted to ask an applicant about the following types of criminal history information at any stage of the hiring process:
 - Criminal arrests or detentions that did not result in conviction;
 - A first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbing the peace;
 - Misdemeanor convictions that occurred more than three years ago (unless the applicant has had subsequent convictions within the last three years); and
 - Juvenile, sealed, or expunged cases.
- An employer must notify an applicant if it intends to perform a criminal background check and must submit a completed Criminal Offender Record Information (“CORI”) Acknowledgement Form to the Department of Criminal Justice Information Statistics (“DCJIS”). Employers that rely only on third-party vendors to conduct criminal background checks are subject to additional requirements.

- After the initial job application, employers are permitted to ask job applicants about:
 - Felony convictions that have not been sealed.
 - Misdemeanor convictions, but only if all of the following apply:
 - they have not been sealed;
 - and they were not first-time convictions for the following offenses: drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace;
 - and were not committed within the previous three years (unless there has been another conviction in the previous three years).

USING CRIMINAL HISTORY INFORMATION TO MAKE ADVERSE EMPLOYMENT DECISIONS
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- Employers should make an individualized assessment before determining that a particular criminal record disqualifies an individual for a particular job. This assessment should consider:
 - The facts or circumstances surrounding the offense or conduct;
 - The number of offenses for which the individual was convicted;
 - Age at the time of conviction, or release from prison;
 - Evidence that the individual performed the same type of work, post-conviction, with the same or a different employer, with no known incidents of criminal conduct;
 - The length and consistency of employment history before and after the offense or conduct;
 - Rehabilitation efforts, e.g., education/training; and
 - Employment or character references and any other information regarding fitness for the particular position.
- Before making an adverse employment decision based at least in part on an applicant's criminal history, an employer must:
 - Notify the applicant of the potential adverse action;
 - Provide the applicant with a copy of the criminal history information;
 - Identify the source of the criminal history information;
 - Provide a copy of the employer's CORI policy, if applicable;
 - Identify the information that is the basis for the potential action;
 - Provide the applicant with an opportunity to dispute the accuracy of information contained in the CORI, and information about how to correct a CORI; and
 - Document all steps taken to comply with applicable CORI laws and regulations.

For additional information, please contact the Civil Rights Division of the Massachusetts Office of the Attorney General at civilrights@mass.gov or (617) 963-2917.