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NEW REQUIREMENTS TAKE EFFECT THIS FRIDAY FOR MASSACHUSETTS EMPLOYERS REQUESTING CRIMINAL HISTORY INFORMATION

By Ellen Kearns and Angela Rapko
Boston Office

In August, 2010, Governor Deval Patrick signed a bill that made significant changes to the Massachusetts criminal offender record information (“CORI”) law. The bill contained staggered effective dates. One of the effective dates is right around the corner.

As of **Friday, May 4, 2012**, Massachusetts employers who request job applicants’ criminal history information must comply with the following requirements, which were designed to improve the accuracy of the criminal history information used during the hiring process and to provide applicants with the opportunity to identify errors in their criminal history records.

Employers will now be required to adhere to certain provisions regardless of whether the criminal history information is obtained from the applicant, the Massachusetts Department of Criminal Justice Information Services (“DCJIS”), a background check provider, or the employer’s own search.

Here are highlights of the changes that will take effect this Friday:

- Employers who consider criminal history information in making employment decisions must provide the applicant with the criminal history record before questioning the applicant about criminal history.
- Before making an adverse employment decision on the basis of criminal history information, in most cases, the employer must provide the applicant with the criminal history record in its possession if it has not already done so.
- Employers who conduct five or more criminal background investigations annually must maintain a written CORI policy.
- Employers are prohibited from disseminating CORI, unless otherwise authorized to do so. Where dissemination is authorized, employers must keep a detailed log concerning each instance of dissemination.
- After verifying the applicant or employee’s identity, the employer is required to permit inspection of the criminal history record in the employer’s possession in a reasonable place during reasonable hours.
- Employers must ensure the confidentiality and security of criminal

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history records and abide by new recordkeeping requirements, including retaining authorizations for access to DCJIS criminal history information for one year and destroying criminal record information within seven years after the date of last employment or the date of the final decision regarding employment, in the case of applicants who were not hired.

To further assist employers in obtaining accurate and updated criminal history records, the amendments permit employers to obtain more information from the DCJIS than is publicly available. Specifically, employers will be able to obtain felony convictions for 10 years after the disposition of the offense or incarceration, misdemeanor convictions for five years after the disposition of the offense or incarceration, and pending criminal charges. Certain employers will qualify to obtain additional information. The DCJIS is currently developing the *iCORI* system through which employers will register to request and receive CORI reports electronically. Before requesting information from *iCORI*, employers will be required to obtain signed authorizations from applicants.

If you have questions regarding the new legislation or any other labor or employment matter, please contact any member of Constangy's **Boston Office** or the Constangy attorney of your choice.

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