

ADVISORY

SULLIVAN & WORCESTER LLP EMPLOYMENT LAW ADVISORY

What Massachusetts Employers Need to Know Going Into 2012

Over the past year, there have been numerous changes to various state and federal laws applicable to Massachusetts employers. Employers in Massachusetts should be aware of these changes and take steps to ensure compliance with the new legal requirements.

GENDER IDENTITY IS NOW A PROTECTED CLASS IN MASSACHUSETTS

In late 2011, Governor Deval Patrick signed into law a bill making gender identity a protected class. The law, which becomes effective on July 1, 2012, will prohibit employers with 6 or more employees from discriminating against employees or job applicants on the basis of gender identity. "Gender identity" is a person's "gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth." Employees who believe they have been discriminated against on the basis of gender identity will be able to file complaints with the Massachusetts Commission Against Discrimination.

To ensure compliance with the law, Massachusetts employers should take the following steps before July 1, 2012:

- Revise discrimination and harassment policies to include gender identity as a protected class;
- Revise anti-discrimination trainings to include training on gender identity discrimination; and
- Inform supervisors of the new law and ensure that supervisors are equipped to handle gender identity issues that might arise in the workplace.

EMPLOYERS WILL BE REQUIRED TO POST NOTICE REGARDING EMPLOYEES' RIGHT TO ORGANIZE

As of April 1, 2012, most private employers will be required to post a notice advising employees of their rights under the National Labor Relations Act. Employers will be required to physically post the notice in conspicuous places (including all places where notices to employees concerning personnel rules or policies are customarily posted), and will also be required to post the notice on the internet or intranet, to the extent that other policies or notices are posted in such places. In some cases, employers will be required to post the notice in languages other than English. Employers may download the required posting at <https://www.nlr.gov/poster>.

IF YOU WOULD LIKE ADDITIONAL INFORMATION, PLEASE CONTACT:

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CORI REFORM IMPOSES NEW OBLIGATIONS ON MASSACHUSETTS EMPLOYERS WHO CONDUCT BACKGROUND CHECKS

Employers Are No Longer Allowed To Inquire Into Criminal History On Initial Written Applications

As a result of the recent broad reform of the Massachusetts Criminal Offender Record Information ("CORI") law, most Massachusetts employers may no longer ask an applicant to provide any information about his/her criminal history on an initial written application or other similar form. Employers may, however, ask criminal history questions later in the hiring process. Massachusetts employers should remove any criminal history questions that remain on their employment application forms.

Employers Who Routinely Conduct Background Checks Must Implement A Written CORI Policy

Under the new law, employers who conduct 5 or more criminal background checks per year must have a written CORI policy. The written policy must advise job applicants that the employer will (1) notify job applicants of any adverse employment decision based on criminal background information and (2) provide applicants with a copy of their CORI. The written CORI policy must also provide applicants with information concerning the process for correcting a criminal record. Employers who routinely conduct background checks should draft a written CORI policy.

Employers Must Give Job Applicants A Copy Of Their CORI Before Making Criminal History Inquiries

Employers who have obtained criminal history information concerning an applicant must provide the applicant with a copy of the criminal history record in the employer's possession before questioning the applicant about his or her criminal history. Additionally, when an employer makes an adverse employment decision based on criminal history, the employer must provide the applicant with a copy of his or her criminal record, to the extent it has not already done so.

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If you need further information about these issues or any employment law issue, please contact one of the Sullivan & Worcester attorneys listed above.

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