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**Labor & Employment Alert
May 2012**

REMINDER

**Additional Changes Pursuant to 2010 CORI
Reform Law Take Effect on May 4, 2012**

For a discussion of these and other Legal issues, please visit our website at www.mhtl.com/law. To receive legal updates via e-mail, contact information@mhtl.com.

Employers are reminded that the remaining provisions of the 2010 Massachusetts Criminal Offender Record Information (CORI) Reform Law become effective on May 4, 2012. On November 4, 2010, the first of the major changes took effect, prohibiting employers (other than those covered by specific statutory exceptions) from requesting criminal record information on an initial application form. On May 4, 2012, the remaining requirements of the 2010 CORI Reform Law take effect.

Effective May 4, 2012:

- **iCORI:** Employers will access CORI reports through a new, secure, web-based service called iCORI.
 - Register with iCORI: Registered employers will be able to obtain access to iCORI. *All* employers who wish to obtain CORI reports – even if CORI certified under the prior web-based CORI system – must register with DCJIS, and re-register annually.
 - Applicant/Employee Authorization: To obtain a CORI report, the employee or applicant *must* sign an acknowledgment form authorizing the employer to obtain the CORI report.
 - Employer Certification: To obtain a CORI report, employers will be required to certify they have verified the identity of the subject (by reviewing proper government issued identification) for whom they are requesting the information.

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- **Access to CORI:** iCORI provides for varying levels of access to CORI information, including “standard” access and four different levels of “required” access. The scope of what an employer will be able to view will vary with the assigned level of access. DCJIS has indicated that most employers will be afforded “standard” access.
- **Adverse Employment Actions and/or Questions Based on CORI:** Employers must provide a copy of the subject’s criminal record to the individual before asking any questions about the criminal record and before making an adverse employment decision on the basis of this information.
 - This requirement applies whether criminal record information was obtained through DCJIS or through some other source.
- **Policy Requirement:** Employers who make 5 or more CORI requests per year must have a CORI policy in place.
 - In addition to what future regulations may require, such a policy must provide that the employer will: notify an applicant or employee of any potential adverse decision based on the subject’s criminal record; provide a copy of the criminal offender record information and the policy to the subject; and provide information concerning the process for correcting a criminal record.
- **Dissemination:** Employers may not disseminate criminal offender record information except upon the request of the subject, or to those in the employer’s organization that have a need to know the contents of the CORI record (and have been listed with DCJIS), or to government entities charged with overseeing, supervising, or regulating them.
- **Retaining CORI:** Employers may not maintain CORI records for more than seven (7) years from the date of last employment or the date of the final decision regarding the subject.
- **Third Party Reporters:** DCJIS proposed regulations impose additional requirements relating to the use of third parties (i.e. consumer reporting agencies) to access criminal offender record information.



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While DCJIS has not yet issued final regulations, it has issued proposed regulations interpreting the new law. DCJIS has also published guidance on CORI reform on its website:

<http://www.mass.gov/eopss/docs/chsb/implementing-cori-reform.pdf>

Additional Practice Tip

The 2010 CORI Reform Law must be read with and considered in conjunction with other laws in the employment area. For instance, just last week on April 25, 2012, the Equal Employment Opportunity Commission published its “Enforcement Guidance” regarding the use of arrest and conviction records in making employment decisions, a copy of which can be found here:

http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm

Among other things, this guidance sets forth the EEOC’s position that an employer’s use of an individual’s criminal history in making employment decisions may, *in some instances*, violate Title VII of the Civil Rights Act of 1964. Specifically, the EEOC reminds employers in this guidance that treating criminal record history differently for different applicants or employees on the basis of race, national origin, or other protected category will violate Title VII. In addition, the EEOC maintains that even the application of a *neutral* policy can violate Title VII if it results in a disparate impact on a particular protected category, and there is no business necessity or other legal defense for such a policy

In addition, the Massachusetts anti-discrimination laws continue to limit what an employer may ask an applicant about his/her criminal history at all stages of the hiring process. The Massachusetts Commission Against Discrimination (MCAD) has expressed the opinion that it, too, may consider disparate impact claims in some cases. The MCAD has also taken the position that using criminal history information unlawfully obtained violates Massachusetts anti-discrimination law. The MCAD provides some guidance on these issues here:

<http://www.mass.gov/mcad/documents/Criminal%20Records%20Fact%20Sheet.pdf>



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Please check back with our website, where we will continue to provide additional information about the 2010 CORI Reform Law and related issues, including the status of DCJIS regulations and further activity on the part of the EEOC and MCAD.

If you have any questions or concerns with regard to this alert, please contact Kathryn M. Murphy or Thomas W. Colomb, attorneys in the law firm of Murphy, Hesse, Toomey & Lehane, LLP, or the attorney assigned to your account.

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