

## Massachusetts Modifies “Ban the Box” Law

---

Wednesday, May 2, 2018

Massachusetts Governor Charlie Baker recently signed [Senate Bill No. 2371](#), “An Act Relative to Criminal Justice Reform,” into law. The law will go into effect October 13, 2018. Among the Act’s extensive criminal justice reform provisions are several important modifications to the “Ban the Box” anti-discrimination laws, outlined below, which will further restrict Massachusetts employers’ ability to consider criminal history in making hiring decisions.

Massachusetts first enacted its “Ban the Box” law, Mass. Gen. L. c. 151B § 4(9½) in August 2010. The law prohibits employers from asking about any information related to a job applicant’s criminal record in the initial written application. In addition, pursuant to Mass. Gen. L. c. 151B § 4(9), employers are prohibited from requesting certain criminal record information from applicants at any point in the application process, even after receiving the initial written application. Specifically, employers may not request information from an applicant, either written or orally, regarding: (1) “an arrest, detention, or disposition regarding any violation of law in which no conviction resulted”; (2) a first conviction of a misdemeanor for “drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace”; or (3) any misdemeanor where the date of conviction or completion of incarceration “occurred five or more years prior” to the date of application for employment, unless the applicant has been convicted of any offense in that same period.

The Act Relative to Criminal Justice Reform includes the following amendments to the existing laws regarding the criminal record information that employers may request following the initial written application:

- **Decreased Time Period for Disclosure of Misdemeanor Convictions:** Employers are prohibited from asking applicants, either written or orally, about any misdemeanor where the date of conviction or completion of incarceration occurred *three* (amended from five) years prior to the date of application, unless the applicant has been convicted of any offense in that same period.
- **New Restriction Regarding Sealed or Expunged Records:** Employers are now additionally prohibited from asking applicants, either written or orally, about criminal records that have been sealed or expunged.
- **Required Notice Language to Applicants:** Employers asking for criminal record information at any point during the application process now must include the following statement on the request form: “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.”

In anticipation of these amendments, employers should work with counsel to review their employment application practices and procedures as they relate to applicants’ criminal records to ensure compliance with the new law.

Laura Franks contributed to this post.

© 2019 Proskauer Rose LLP.

**Source URL:** <https://www.natlawreview.com/article/massachusetts-modifies-ban-box-law>



Article By [Samantha L. Regenbogen](#)  
[Mark W. Batten](#)  
[Proskauer Rose LLP](#)  
[Law and the Workplace](#)

[Labor & Employment](#)  
[Election Law / Legislative News](#)  
[Massachusetts](#)