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RE: CLIENT ADVISORY
CORI Reform Act, Chapter 256 of the Acts of 2010

As you know, at Petrini & Associates, P.C., we place great importance in the delivery of quality legal representation. In this regard, we sometimes provide advisory updates on significant developments in various areas of the law affecting our clients.

Recently, the legislature enacted "An Act Reforming the Administrative Procedures Relative to Criminal Offender Record Information and Pre- and Post-Trial Supervised Release" ("CORI Reform Act"). See St. 2010 c. 256. The act was signed into law by Governor Patrick on August 6, 2010.

The CORI Reform Act changes existing law in several ways. Most significantly, effective November 4, 2010, **employers are no longer permitted to seek disclosure of a job applicant's criminal record information prior to the interview stage of the hiring process, such as through a written application**.[1] G.L. c. 151B § 4(9½). All private employers who employ 6 or more persons, and all public employers, regardless of the number of people involved, are subject to G.L. c. 151B. Prior to the CORI Reform Act, employers were permitted ask about felony and certain misdemeanor convictions. There are two limited statutory exceptions to the new law: employers are permitted to ask about criminal convictions if:

(1) The applicant is applying for a position where federal or state law or regulation creates a mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses (i.e.., a statute or regulation specifically bars the employer from hiring an applicant with a particular criminal conviction), or
(2) The employer or an affiliate is subject by federal or state law or regulation not to employ persons in 1 or more positions who have been convicted of 1 or more types of criminal offenses (for example, banks are required by federal law to make inquiries about whether an applicant has been convicted of a crime involving dishonesty, breach of trust or money laundering).

[1] Although Section 4(9½) applies only to written inquiries, the MCAD Guidelines issued regarding the CORI Reform Act suggests the MCAD will also interpret the new law to prohibit employers from seeking criminal record information orally as well if an applicant self-identifies as disabled and seeks a modification to the application process such that the application is completed orally rather than in writing.

To ensure compliance with the new law, employers should immediately revise their employment applications to remove such questioning. For employers with a national or international standard form, such forms may continue to be used, but the Massachusetts Commission Against Discrimination ("MCAD"), has issued guidance that such employers' forms should contain explicit instructions that the employer is prohibited from obtaining criminal history information from the employee (unless one of the statutory exceptions set forth above applies) and include a clear, unambiguous disclaimer in bold-faced type, placed and printed to attract the reader's attention. The example disclaimer included in the MCAD Guidelines is the following:

> **MASSACHUSETTS APPLICANTS ONLY:**
> **Under Massachusetts law, an employer is prohibited from making written, pre-employment inquiries of an applicant about his or her criminal history. MASSACHUSETTS APPLICANTS SHOULD NOT RESPOND TO ANY OF THE QUESTIONS SEKKING CRIMINAL RECORD INFORMATION.**

The CORI Reform Act also prohibits employers from asking an applicant to obtain a copy of his or her CORI record for the employer. G.L. c. 6 § 172. Employers who violate this particular law are subject to sanctions by the Criminal History Systems Board. G.L. c. 6 § 168. The MCAD, which is charged with enforcement of G.L. c. 151B, has further indicated that a violation of G.L. c. 6 § 172 may be used as evidence in a case involving a violation of G.L. c. 151B § 4(9) or (9½).

Additionally, employers may not ask applicants or current employees, orally or in writing, about (1) any prior arrest, detention or disposition that did not result in a conviction, (2) any prior first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, (3) a conviction of a misdemeanor where the date of the conviction predates the inquiry by more than 5 years, or (4) sealed records or juvenile offenses. G.L. c. 151B § 4(9).

There are other provisions of the CORI Reform Act which, while not yet effective, may also significantly affect employers' hiring procedures. In connection with employment decisions, the CORI Reform Act will require employers, starting in February 2012, to provide an applicant with the criminal history record obtained by the employer (1) before questioning the applicant about their criminal history or (2) if a decision adverse to the applicant is made on the basis of their criminal history. G.L. c. 6 § 171A. Further, for employers who annually conduct 5 or more criminal background investigations, employers will also be required, starting in February 2012, to maintain a written CORI policy providing that, in addition to any obligations required by the commissioner by regulation, the employer will: (i) notify the applicant of the potential adverse decision based on the CORI; (ii) provide a copy of the CORI and the policy to the applicant; and (iii) provide information concerning the process for correcting a criminal record.

Please contact me should you have any questions or concerns regarding this important new law affecting employers.