Discrimination Claims: Unlawful Use of CORI in Employment Decisions

Attorney Tasheena M. Davis
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➢ A criminal record can have a significant negative impact on employment opportunities.

➢ It can reduce the likelihood of a callback or job offer by nearly 50% even without a conviction.

➢ The negative impact of a criminal record is twice as large for Black job applicants.
LAWS AGAINST CORI DISCRIMINATION:

THERE ARE FEDERAL AND STATE LAWS THAT PROHIBIT EMPLOYERS FROM USING CRIMINAL HISTORY TO MAKE DECISIONS IN ANY STAGE OF EMPLOYMENT, INCLUDING SCREENING, HIRING, RETENTION AND PROMOTION.

➢ Title VII of the Civil Rights Act of 1964
➢ Mass. Gen. Laws chapter 151B
➢ U.S. Equal Employment Opportunity Commission
➢ Massachusetts Commission Against Discrimination
Disparate Impact v. Disparate Treatment: Legal Claims for CORI Discrimination

**Disparate Impact:** A policy that is facially neutral but creates a negative impact for a particular group of people. (protected class)

- **Blanket hiring policies:** Rejection of all job applicants with criminal records is discriminatory and likely violates civil rights laws.

**Disparate Treatment:** Uses CORI records to discriminate against an individual due to race/national origin.

**John-white applicant**
- College Grad
- 5 years of relevant work experience
- Conviction for marijuana possession

**Darren-Black applicant**
- College Grad
- 5 years of relevant work experience
- Conviction for marijuana possession
What can an employer ask and when?

**Disparate Treatment**

During application stage:

- It is unlawful for an employer to ask about a criminal record on a written application prior to an interview.
- It is unlawful for an employer to ask an applicant to provide their CORI record.
- It is unlawful for an employer to ask an applicant if they have been convicted of a crime, whether felony or misdemeanor prior to an interview.
- If a CORI entry was sealed, an applicant can answer “No” when asked if he/she has a record.
What can an employer ask and when?

**Disparate Treatment**

During application stage and during employment:

- It is unlawful for an employer to ask about ANY arrest that did not result in a conviction or about sealed/expunged records.

- It is unlawful for an employer to ask about the following types of information contained on a CORI:
  - First offense misdemeanors for public drunkenness, simple assault, speeding, traffic violations, or disturbing the peace.
  - Convictions for misdemeanors that are 3 or more years old.
All employers aren’t created equally.

- There are specific employers that are permitted to ask about criminal records during the application process or from current employees.

- Specific employers may be allowed to use CORI information in employment decisions when there is a separate law allowing this. The law creates a presumptive or mandatory qualification based on the type of position being sought.

  - Examples include positions caring for children or the elderly.
Claims for Disparate Impact: Facially Neutral Policies That Cause Discriminatory Effects

Jones v. City of Boston – LCR’s long-running case against BPD for its discriminatory drug “hair test” policy that relies on a test that is unreliable and discriminatory.

Andrews, et. al. v. Amazon – LCR’s class action lawsuit against Amazon, for its overly-stringent background check practices that disparately impact Black and Latino drivers.

Gregory v. EEC – LCR’s most recent class action against the EEC which used decades-old juvenile records as a basis for a lifetime-ban. Applicants weren’t given due process or individualized review.
Get Familiar With Your CORI and Know Your Rights

➢ If someone has been involved with the criminal justice system, it is important they obtain a copy of their CORI to know what is included in the record and what is not.

➢ Get to know your rights under federal and state anti-discrimination laws to protect against CORI discrimination in employment.

➢ Familiarize yourself with the agencies responsible for enforcing anti-discrimination in employment.