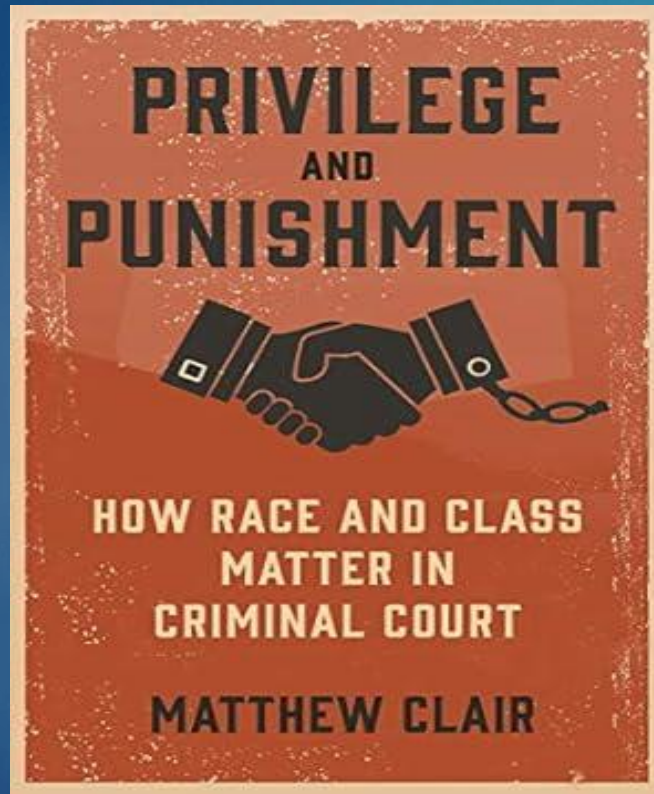


Discrimination Claims: Unlawful Use of CORI in Employment Decisions

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DISCRIMINATION



- 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.