October 1, 2018

Dear President Gee, Provost McConnell, Associate Provost for Academic Personnel C.B. Wilson, and WVU Board of Governors,

We recently learned that West Virginia University has decided to extend its use of criminal background checks to new faculty hires and graduate assistants. This policy is offered as part of the University’s commitment to a “safe and secure environment.”

As members of the WVU community who are concerned about structural inequality and the social harms of mass incarceration, we must ask, Who will be safer? Who will be harmed? Who will be excluded? And how will we know?

We live in the most incarcerated nation in the world. Differential and adverse outcomes based on race occur at every stage of the criminal justice process. Vulnerability to incarceration also breaks along class, sexuality, gender, national origin, and disability lines.

Seventy million Americans have criminal histories. Every year, approximately 700,000 people are released from state and federal prisons. Two million cycle out of jails. Returning citizens are often legally barred from public housing, public assistance, voting, occupational licenses, state employment, and student aid programs.

A national movement led by formerly incarcerated people is working to remove these obstacles to re-entry. The use of criminal information causes harm that can be difficult to measure and easy to deny. But for people trying to integrate into civic life, the exclusionary force of these checks is clear.

The Equal Employment Opportunity Commission (EEOC) has concluded that national data on the criminal justice system “provides a basis for the Commission to investigate Title VII disparate impact charges challenging criminal record exclusions.” The EEOC recommends that employers, in general, do two things:

- Eliminate policies or practices that exclude people from employment based on any criminal record.
- Train managers, hiring officials, and decision makers about Title VII and its prohibition on employment discrimination.

If criminal checks are used, the EEOC recommends that employers develop “a narrowly tailored written policy and procedure for screening applicants” with attention to “a demonstrably tight nexus to the position in question.” WVU’s comprehensive screen will make it difficult to comply with this guidance and to comport with the University’s commitment to diversity, equity, and inclusion.

Introduced in the summer, the policy was designed without meaningful involvement from faculty, staff, and students. The following are initial questions:

1. Was this change generated primarily by safety or liability concerns?
2. How does the University plan to avoid the disproportionate exclusion of persons with protected status? What practices and procedures are in place (beyond attention to Recency, Severity, and Job Relation) to meet the civil rights standards of Title VII?

3. Does applicant data for staff hires indicate a race-neutral impact? We realize that certain exclusions will not be captured by data.

4. How does the University plan to mitigate the chilling effect this policy will have on applicants with criminal records?

5. How is “severity of crime” assessed? In the case of an adverse report, applicant eligibility will be determined by Talent and Culture. Does the involved department have any part in the final decision?

We hope that WVU will reconsider this policy. We plan to create opportunities to discuss the collateral consequences of criminal convictions and the ethical stance that institutions of higher education should take in an era of mass incarceration. We remain committed to fair hiring practices and to the restoration of civil rights for formerly incarcerated people.

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