

Employment Discrimination - Disparate Treatment and Disparate Impact

What is Disparate Treatment?

- Disparate treatment means that members of a protected class are treated differently from those who are not in that group.
- For example, an employee with a disability not being allowed to attend a training, while employees without disabilities are able to attend. See 29 CFR § 1607.11.

What is Disparate Impact?

- Disparate impact occurs when a policy or practice appears to be neutral but has the effect of discriminating against members of a protected class.
- For example, if an employer requires all job applicants to climb a ladder it has the effect of discriminating against applicants with physical disabilities who may not be able to climb a ladder.

How Do I Prove That a Policy or Practice Has a Disparate Impact?

To prove that a policy or practice has a disparate impact, an individual must:

- Identify the facially neutral policy or practice
- Establish adversity or harm
- Establish that there is a disparity between those in a protected class and those who are not in a protected class
- Determine the significance of the disparity

After the policy or practice is identified, the next step is to determine if the reason for the policy or practice is legitimate, integral, important, and if the policy or practice is related to the stated objective. A policy or practice may be found to be discriminatory if it has an adverse effect on members of a protected class.

If an investigating agency identifies that there is substantial legitimate justification for a policy or practice, the agency must also determine if there are less discriminatory alternatives. See US Dept. of Justice Civil Rights Division: Disparate Impact.



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