

Executive Order Limits Use of Disparate Impact Theory Under Civil Rights Act



Client Alert

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On April 23, 2025, President Donald Trump issued an Executive Order that is intended to limit employees' and applicants' abilities to use the disparate impact theory of liability to establish violations of the Civil Rights Act of 1964, as amended.

The Executive Order's stated purpose is to "eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals." The Executive Order therefore calls for the repeal or amendment of long-standing federal regulations to Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin in programs receiving federal financial assistance, to remove the disparate-impact theory as an available avenue to prove a violation of the Civil Rights Act of 1964, as amended.

While this Executive Order is very likely subject to legal challenge, it could have far reaching impact upon federal contractors if it remains in effect and will very likely make it more difficult for plaintiffs in Title VI actions to establish

a violation of the Civil Rights Act of 1964, as amended. For example, under the Executive Order, a federal contractor would no longer face legal risk under Title VI if an employee could establish only that an employment decision or policy has an unintended discriminatory impact upon members of one or more of the legally protected classes under Title VI. Instead, the plaintiff in a Title VI action will now need to prove actual disparate treatment in order to establish liability against the employer.

Importantly, private sector employers that are not federal contractors should note that this Executive Order also directs that the Equal Employment Opportunity Commission (EEOC), "shall assess all pending investigations, civil suits, or positions taken in ongoing matters under every Federal civil rights law within their respective jurisdictions, including Title VII of the Civil Rights Act of 1964, that rely on a theory of disparate-impact liability, and shall take appropriate action with respect to such matters consistent with the policy of this order." Therefore, it is reasonable to expect additional guidance from the EEOC regarding its use of the disparate impact theory in Title VII discrimination claims, as the Executive Order provides that, "all agencies shall deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability, including but not limited to 42 U.S.C. § 2000e-2 [Title VII] ..."

Finally, employers should recall that many states and some local municipalities have enacted their own Human Rights or Civil Rights Laws that recognize the disparate impact theory of liability. Because these state and local laws remain in effect despite the Executive Order -- and the corresponding legal risk to employers remains -- employers should continue to be vigilant in reviewing the impact that their employment decisions and policies may have upon members of legally protected classes.

If you have questions about the implications of this new executive order, please contact [Brendan P. Kelleher](#) (bkelleher@lippes.com) or any member of our [Employment Practice Team](#).