

Publications

New Executive Order Seeks to Eliminate Disparate-Impact Liability

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On April 23, 2025, President Trump issued an executive order (EO) titled *Restoring Equality of Opportunity and Meritocracy*. This EO seeks to eliminate the use of disparate-impact liability in various contexts, arguing that disparate-impact liability “undermines our national values,” “runs contrary to equal protection,” and “violates our Constitution.”

Disparate-Impact Theory

Disparate-impact liability is a legal theory under anti-discrimination laws, such as Title VII of the Civil Rights Act of 1964, which holds employers accountable for policies and practices that are neutral on their face but have a disproportionately adverse effect on members of a protected class (such as race or sex) without a valid justification. Unlike disparate-treatment claims, which require proof of discriminatory intent, disparate-impact claims focus on the effects of policies or practices, regardless of intent.

Purpose of the EO

The EO claims to reinforce the principles of equal treatment under the law and merit-based decision-making by eliminating reliance on disparate-impact liability in federal policies and enforcement. According to the EO, disparate-impact liability has resulted in race-based and group-based considerations in hiring and other employment decisions, which the EO argues contradicts the constitutional promise of equal opportunity. The EO asserts that removing the disparate-impact liability will allow individuals and businesses to make decisions based on skills, qualifications, and merit, rather than demographic factors.

Key Provisions

The EO does the following:

- Directs federal agencies to deprioritize enforcement of statutes and regulations that rely on disparate-impact liability.

- Directs the Attorney General to take necessary steps to repeal or revise federal agency regulations that incorporate disparate-impact liability.
- Orders the Attorney General to report all existing regulations, guidance, rules, or laws (including state laws) that impose disparate-impact liability and to recommend appropriate measures to amend, repeal, or challenge their constitutionality or legality.
- Directs the Equal Employment Opportunity Commission to assess all pending investigations and legal actions that rely on the disparate-impact theory to assure compliance with the EO.
- Orders all federal agencies to assess consent judgments and permanent injunctions and to take appropriate actions consistent with the EO.

Practical Implications

The EO affects only federal agencies, preventing them from enforcing the disparate-impact theory in their regulations, rules, investigations, and legal actions. Federal agencies may issue guidance on the EO in the coming months. Regardless, disparate-impact liability currently remains a viable doctrine under federal statutes, U.S. Supreme Court decisions, and various state anti-discrimination laws. Private individuals can still initiate lawsuits based on this theory. Employers should continue to comply with any applicable federal, state, and local laws that impose disparate-impact liability. The impact of the administration's challenge to laws that are inconsistent with the EO's dictates remains uncertain. Contact your Vorys lawyer if you have questions about the EO's potential impact.