

President Trump Issues Executive Order to Curtail the Use of Disparate Impact Liability Under Federal Anti-Discrimination Law

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On April 23, 2025, President Donald J. Trump signed [Executive Order 14281](#), *Restoring Equality of Opportunity and Meritocracy* (the “EO”), which aims to eliminate disparate impact as a theory of liability for unlawful discrimination “in all contexts to the maximum degree possible.”

Under federal employment statutes (and those of many states), employers may be held liable for disparate impact discrimination—even in the absence of discriminatory intent—if facially neutral employment policies or practices have a discriminatory impact on members of a protected class. The EO declares that disparate impact liability undermines equal opportunity by creating a “near insurmountable presumption” of discrimination where there are differences in outcomes for different races, sexes or other protected groups. This, according to the EO, forces employers to consider race and engage in unlawful racial balancing to avoid disparate impact liability—actions that the EO characterizes as “wholly inconsistent with the Constitution.”

Accordingly, the EO directs all federal agencies to deprioritize the enforcement of statutes and regulations, such as Title VII of the Civil Rights Act of 1964, to the extent they impose disparate impact liability. The EO also specifically directs the Attorney General to repeal or amend any disparate impact regulations underlying Title VI of the Civil Rights Act of 1964 (which prohibits race, color and national origin discrimination in programs and activities receiving federal funding). Furthermore, the EO orders the Attorney General to coordinate with agency heads to identify and report on all federal regulations, guidance, rules and orders that impose disparate impact liability with the aim of amending or repealing them. Agency heads are also instructed to report on disparate impact laws and judicial decisions, including at the state level, with measures to address “any constitutional or other legal infirmities,” including whether federal authority preempts state disparate impact law based on federally protected characteristics.

Meanwhile, federal departments and agencies are directed to conduct a review of their current disparate impact-related matters. The Attorney General and Chair of the Equal Employment Opportunity Commission are specifically ordered to assess “pending investigations, civil suits, or positions taken in ongoing matters” under federal civil rights laws, and to take action consistent with the EO within 45 days. All agencies must also evaluate existing consent judgments and permanent injunctions relying on disparate impact, and take action consistent with the EO within 90 days.

President Trump’s most recent EO further demonstrates ongoing efforts by his Administration to fundamentally reshape the landscape of federal anti-discrimination law, though its effectiveness in this department remains an open question. Like the EOs that have come before it, *Restoring Equality of Opportunity and Meritocracy* is almost certain to face its own set of constitutional challenges in the coming weeks and months. This is a rapidly developing area of the law, and employers are encouraged to stay tuned for additional updates. If you have any questions about this article, please contact **Elizabeth N. Hall** at ehall@vedderprice.com, **Alex C. Weinstein** at aweinstein@vedderprice.com, **Michael D. Considine** at mconsidine@vedderprice.com, or any other Vedder Price attorney with whom you have worked.