



**FCRA WAGE PROJECT
CHAPTER 4: DISPARATE IMPACT CLAIMS
[ALL-IN-ONE DOCUMENT]**

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FCRA WAGE PROJECT

CHAPTER: 4 DISPARATE IMPACT CLAIMS

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ITEMS: A through F



4-0 | CHAPTER INTRO - DISPARATE IMPACT CLAIMS

My employer's policies disadvantage women more than men.

- a. What Does disparate impact mean?
- b. What is a facially neutral policy?
- c. What Does disparate impact look like?
- d. What kinds of claims can be brought as a disparate impact claim?
- e. I think that a company policy adversely affects me because of my gender, how do I prove it?
- f. What is the difference between disparate impact and disparate treatment?
- g. Are there times when an employment policy or practice may legally impact women different than men?
- h. What could my employer do to deny my allegations, and how do I respond to its denials?
- i. Does it matter when the discrimination occurred? (new window to WDTLS)
- j. What options do I have if I my employer has fewer than fifteen employees? (new window to WDTLS)
- k. If I prove my disparate impact claim, what kind of remedies am I entitled to? (new window to Remedies)

(unknown authors)



4-1 | NOTE ON DISPARATE IMPACT CLAIMS IN FLORIDA

(Note: The FCRA Does not specifically mention disparate impact, so the information on this page is based largely on federal law. See the Federal Law page for more details.)

(unknown authors)



4-A | WHAT DOES DISPARATE IMPACT MEAN?

Disparate impact means something has the effect of discriminating against women, even though it may not have intended to do so.

(unknown authors)



4-B | WHAT IS A FACIALLY NEUTRAL POLICY?

A facially neutral policy is one that Does not appear to discriminate in its exact wording or construction.

(unknown authors)



4-C | I THINK THAT A COMPANY POLICY ADVERSELY AFFECTS ME BECAUSE OF MY GENDER, HOW DO I PROVE IT?

In order to prove disparate impact in an employment context, you must:

1. identify the specific employment practice being challenged;
2. show a disparate impact by showing that a facially neutral practice which treats one group of employees in a discriminatory manner; and
3. show by statistical evidence that that the practice has, in fact, been discriminatory.^{[29](#)}

(unknown authors)

Footnotes

²⁹ See Florida State University v. Sonnel, 685 So. 2d 923, 930-931 (Fla. 1st Dist. App. 1996); Prieto v. City of Miami Beach, 190 F.Supp. 2d 1340 (S.D. Fla. 2002)



4-D | WHAT IS THE DIFFERENCE BETWEEN DISPARATE IMPACT AND DISPARATE TREATMENT?

Disparate impact is the effect of a policy that was not necessarily intended to discriminate. Disparate treatment is intentional discrimination against someone because of their protected class.

(unknown authors)



4-E | ARE THERE TIMES WHEN AN EMPLOYMENT POLICY OR PRACTICE MAY LEGALLY IMPACT WOMEN DIFFERENT THAN MEN?

An employer may justify a practice based on a bona fide occupational qualification (BFOQ), which is a legally legitimate reason for which an employer may consider sex or any other protected class as a qualification necessary for the performance of a particular type of employment.³⁰

(unknown authors)

Footnotes

³⁰ Fla. Stat. Ann. §760.10(7)



4-F | WHAT COULD MY EMPLOYER DO TO DENY MY ALLEGATIONS, AND HOW DO I RESPOND TO ITS DENIALS?

Once you make your initial allegation, your employer must demonstrate the practice is based on a bona fide occupational qualification or a bona fide seniority system (see Equal Pay section). Courts have permitted such defenses even where they have a disparate impact upon minorities.³¹ It is up to you to refute this.

(unknown authors)

Footnotes

³¹ Prieto, 190 F.Supp. 2d at 1353.



APPENDIX



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