

**END DISPARATE IMPACT LIABILITY IN HIRING**

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**TOPLINE:** Policymakers should dismantle “[disparate impact](#)” laws and rules, which can require employers to justify employment practices like aptitude tests if they have different outcomes by race, sex, or other protected class.

**BACKGROUND:** Title VII of the 1964 [Civil Rights Act](#) prohibited employment practices that amount to discriminatory *treatment* based on race, color, religion, sex, or national origin. A 1991 [law](#) added the potential for claims based on disparate *impact*. Since then, court interpretations, regulations and guidelines from the Equal Employment Opportunity Commission (EEOC) have left employers [vulnerable](#) to discrimination claims for business practices with no underlying discriminatory intent. “Disparate impact” liability has discouraged employers from using tests of general aptitude, instead relying on college outcomes to [screen](#) job candidates to limit risk of EEOC claims. President Trump has [directed](#) agencies to deprioritize disparate impact enforcement and prioritized a meritocracy focus at the EEOC. On June 9, 2026, the Justice Department’s Office of Legal Counsel [opined](#) that the EEOC’s interpretation of the disparate impact doctrine violates the 14<sup>th</sup> Amendment’s Equal Protection Clause by pressuring employers to engage in race-based decision-making. Simultaneously, the EEOC has been [shifting](#) enforcement priorities away from disparate impact claims.

**Action Items (Congress and the Executive Branch):**

- **The executive branch should continue to challenge disparate impact doctrine.**
- **Congress should repeal disparate impact liability** under Title VII (42 U.S.C. § 2000e-2(k)) or clarify that employers cannot be held liable for practices that aren’t intended to discriminate based on protected class.
- **Congress should codify safe harbor rules** that allow employers to administer general or relevant aptitude tests without risk of employment law liability.

**How It Would Make Life More Affordable:**

- Letting employers set their own hiring practices would improve matching of workers to jobs where they can be most productive and command a high wage.
- Reducing risk of legal, reputational, or financial damages for making “wrong” hiring decisions would cut HR overhead and make firms more willing to hire.
- Letting employers distinguish between job candidates’ qualifications via testing would reduce employers’ reliance on expensive degrees as a deciding factor.
  - This would reduce artificially inflated demand for degrees and alleviate upward pressure on college tuition and student loans.

**Related Legislation or Proposals:** Restoring Equal Opportunity Act ([S. 2343](#), [H.R. 4448](#)).

**BOTTOMLINE:** Disparate impact rules can *increase* disparities in labor outcomes between those with and without degrees, hurting many of the people they are intended to help.