

For Immediate Release

Office of Public Affairs

Office of Legal Counsel found guidelines pressured employers to engage in racial discrimination

WASHINGTON — The Department of Justice has issued an opinion to the Equal Employment Opportunity Commission (“EEOC”) that its guidelines about disparate-impact liability under Title VII of the Civil Rights Act are unconstitutional. The Office of Legal Counsel found that EEOC’s guidelines pressured employers to engage in racial discrimination. Under those guidelines, employers could be held liable for unequal hiring and promotion outcomes among different groups, without regard to the employer’s likely intent.

The Justice Department’s opinion for EEOC helps to implement Executive Order 14281, which rejected disparate-impact liability insofar as “it creates a near insurmountable presumption [that] unlawful discrimination exists where there are any differences in outcomes in certain circumstances among different races, sexes, or similar groups.”

“Despite trying to promote equality, EEOC’s disparate impact liability interpretation under Title VII actually fosters the very discrimination its guidelines seek to address,” said Acting Attorney General Todd Blanche. “This opinion will now allow businesses to hire based on performance, restoring equal opportunities in the American workplace.”

“The EEOC is grateful for the thoughtful and insightful analysis provided by Assistant Attorney General Gaiser and Deputy Assistant Attorney General Craddock regarding disparate impact under Title VII,” EEOC Chair Andrea Lucas said. “We believe this opinion will provide clarity regarding the Constitutional limits of disparate impact in employment discrimination matters.”

According to the opinion, businesses can use hiring practices that are generally related to job performance—such as aptitude tests, knowledge-based tests, criminal-background checks, and SAT scores—without fear of violating Title VII simply because such practices may result in different outcomes for different demographic groups. To justify using such tools, employers only need to show that the practice is reasonable, useful, or helps serve a valid business purpose.

The opinion also states that people bringing a disparate-impact claim must meet two requirements. They must show that the specific hiring practice directly caused the unequal outcomes they are challenging. And they must identify another approach that would be equally effective for employers but would result in fewer unequal outcomes. This means plaintiffs must prove that the employer’s method specifically caused the unequal outcomes—and offer a workable, fairer alternative.

Read the full opinion [here](#).

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