

## **Alert** | Labor & Employment



**April 2025**

### **President Trump Signs Executive Order Regarding Disparate-Impact Liability**

On April 23, 2025, President Trump issued an executive order entitled “**Restoring Equality of Opportunity and Meritocracy**.” The order aims to “eliminate the use of disparate-impact liability in all contexts to the maximum degree possible.”

Disparate-impact is a theory of discrimination applied when a facially neutral policy or practice has a statistically significant impact on a protected group. First recognized by the U.S. Supreme Court in *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971), disparate-impact theories of liability have also been recognized under fair housing and equal credit laws and other contexts. In 1991, the U.S. Congress amended Title VII of the Civil Rights Act of 1964 to add Section 703(k), which codified how an “unlawful employment practice based on disparate impact” could be established.

The executive order characterizes disparate-impact liability as creating “a near insurmountable presumption of unlawful discrimination ... where there are any differences in outcomes in certain circumstances among different races, sexes, or similar groups, even if there is no facially discriminatory policy or practice or discriminatory intent involved, and even if everyone has an equal opportunity to succeed.” The executive order further states that disparate-impact liability “all but requires individuals and businesses to consider race and engage in racial balancing to avoid potentially crippling legal liability” and “is wholly inconsistent with the Constitution.”

To achieve this new policy, the executive order, among other items:

- Orders all federal agencies to “deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability,” including, but not limited to, Title VII (Section 4).
- Directs the repeal or amendment of certain regulations that impose disparate-impact liability on, and require affirmative action by, recipients of federal funding under Title VI, including nonprofits, universities, and certain federal contractors. Section 3 provides that it is revoking the “Presidential approval” of such regulations, while section 5(a) directs the U.S. attorney general to “initiate appropriate action to repeal or amend” those regulations.
- Orders the U.S. attorney general and the chair of the Equal Employment Opportunity Commission (EEOC) to “assess all pending investigations, civil suits, or positions taken in ongoing matters under every Federal civil rights law within their respective jurisdictions” that utilizes a theory of disparate-impact liability within 45 days of the order. Section 6(a) again identifies matters pursuant to Title VII as an exemplar requiring specific review.
- Orders all agencies responsible for enforcing the Equal Credit Opportunity Act, Title VII, the Fair Housing Act, and any other law “prohibiting unfair, deceptive, or abusive acts or practices” to “evaluate all pending proceedings that rely on” disparate-impact liability theories and to “take appropriate action” consistent with the order, also within 45 days of the order. Section 6(b) explicitly directs the U.S. attorney general, the secretary of Housing and Urban Development, the director of the Consumer Financial Protection Bureau, and the chair of the Federal Trade Commission to engage in such efforts.
- Orders all federal agencies to “evaluate consent judgments and permanent injunctions that rely on theories of disparate-impact liability and take appropriate action” within 90 days of the order (Section 6(c)).
- Orders the U.S. attorney general and other federal agencies to “determine whether any Federal authorities preempt State laws, regulations, policies, or practices that impose disparate-impact liability based on a federally protected characteristics such as race, sex, or age, or whether such laws, regulations, policies, or practices have constitutional infirmities that warrant Federal action” and take actions consistent with the order (Section 7(a)).
- Orders the U.S. attorney general and the EEOC chair to jointly create “guidance or technical assistance to employers” about “appropriate methods to promote equal access to employment regardless of whether an applicant has a college education, where appropriate” (Section 7(b)).

### **Practical Considerations**

Federal agencies will not likely initiate investigations or enforcement actions that rely on disparate-impact theories. As a result of the order, they may also close, dismiss, or narrow existing investigations, lawsuits, and ongoing monitorships pursuant to consent decrees or other agreements where disparate-impact liability is the underlying legal theory. Such agencies may also seek to repeal or amend regulations and guidance documents imposing or recognizing disparate-impact liability, including affirmative action regulations that address disparate-impact liability. *See* 29 C.F.R. Part 1608.

The order also has implications in the selection and testing arena, including for AI developers and deployers, as it signals that the current administration may not allocate investigation, enforcement, or litigation resources to disparate-impact claims against employers using AI tools or other tests.

Despite this, private individuals can continue to bring litigation invoking disparate-impact theories, and the order has no immediate impact on existing disparate-impact case law. Still, litigation prompted by the order may lead courts to reconsider precedents upholding theories of disparate-impact liability.

The potential enforcement priority shift stemming from this executive order may create complex interactions with private rights of action under federal law, state law protections, and local ordinances that continue to recognize disparate-impact liability. For example, disparate-impact components are present in local laws like New York City's Human Rights Law and a new proposed rule from New Jersey's Division on Human Rights. States like Colorado and Illinois have passed new laws effective Feb. 1, 2026, and Jan. 1, 2026, respectively, that aim to address unlawful bias arising from an employer's use of AI for employment decisions. Other state legislatures are also considering new laws. However, as noted, the current administration will evaluate potential preemption of these and other laws and regulations.

## Authors

This GT Alert was prepared by:

- **Nikki Lewis Simon** | +1 305.579.0567 | [simonn@gtlaw.com](mailto:simonn@gtlaw.com)
- **Naomi G. Beer** | +1 303.572.6549 | [beern@gtlaw.com](mailto:beern@gtlaw.com)
- **Mikaela Shaw Masoudpour** | +1 303.572.6559 | [Mikaela.Masoudpour@gtlaw.com](mailto:Mikaela.Masoudpour@gtlaw.com)

Albany. Amsterdam. Atlanta. Austin. Berlin<sup>~</sup>. Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia<sup>+</sup>. Las Vegas. London<sup>\*</sup>. Long Island. Los Angeles. Mexico City<sup>+</sup>. Miami. Milan<sup>\*</sup>. Minneapolis. Munich<sup>-</sup>. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. São Paulo<sup>»</sup>. Seoul<sup>∞</sup>. Shanghai. Silicon Valley. Singapore<sup>™</sup>. Tallahassee. Tampa. Tel Aviv<sup>^</sup>. Tokyo<sup>+</sup>. United Arab Emirates<sup><</sup>. Warsaw<sup>-</sup>. Washington, D.C. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin and Munich offices are operated by Greenberg Traurig Germany, LLP, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. \*Operates as a separate UK registered legal entity. «Greenberg Traurig operates in the Kingdom of Saudi Arabia through Greenberg Traurig Khalid Al-Thebity Law Firm, a professional limited liability company, licensed to practice law by the Ministry of Justice. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Studio Legal Associato, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ›Greenberg Traurig's São Paulo office is operated by Greenberg Traurig Brazil Consultores em Direito Estrangeiro – Direito Estadunidense, incorporated in Brazil as a foreign legal consulting firm. Attorneys in the São Paulo office do not practice Brazilian law. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ™Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¤Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. <Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ~Greenberg Traurig's Warsaw office is operated by GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAURIG Nowakowska-Zimoch Wysokiński sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2025 Greenberg Traurig, LLP. All rights reserved.*