

1-G | WHAT IS DISPARATE IMPACT AND HOW DO YOU PROVE IT?

To prove disparate impact (sometimes referred to as "adverse impact"), an employee must show that a facially-neutral policy or practice has a significant adverse impact on a protected class. For disparate impact, the employee need not show discriminatory intent. Griggs v. Duke Power Co., 401 U.S. 424, 430-32 (1971).

As a result of the Civil Rights Act of 1991's amendment to Title VII, an employee seeking to prove disparate impact must articulate a prima facie case of disparate impact by showing that the challenged practices have a disproportionate impact on a protected group. If the employee makes this showing, the burden of persuasion shifts to the employer to show that the challenged practices are "job related for the position in question and consistent with business necessity." 42 U.S.C. § 2000e-2k(1)(A). To meet this burden of persuasion, the employer can use any of the three validation techniques included in the EEOC's Uniform Guidelines on Employee Selection Procedures. 29 C.F.R. § 1607.

*(American Bar Association // Section of Labor and Employment Law
Equal Employment Opportunity Committee // EEO Law Basics // Spring 2006)*

