

CLIENT ALERT: White House Issues Executive Order to Eliminate Disparate Impact Theory in the Enforcement of Discrimination Laws

On April 23, 2025, The Trump administration issued Executive Order (“EO”) 14821, entitled, **“Restoring Equality of Opportunity and Meritocracy,”** aimed at eliminating disparate impact liability in all contexts, including employment discrimination actions. At its most basic level, disparate impact theory prohibits the use of policies or practices that are on their face neutral but in practice, negatively affect certain protected groups more than non-protected groups. EO 14821 addresses different issues than the recent **flurry of Executive Orders targeting private and public sector diversity, equity, and inclusion (“DEI”) programs.** EO 14821 targets several civil rights statutes that broadly prohibit disparate impact based on protected characteristics like race, gender, and age and directs federal agencies tasked with enforcing anti-discrimination laws to significantly reduce the use of disparate impact analysis.

In EO 14821, the White House states that disparate impact theory “all but requires individuals and businesses to consider race and engage in racial balancing to avoid potentially crippling legal liability,” “runs contrary to equal protection under the law,” and therefore “violates our Constitution.” EO 14821 is a departure from previous administrations’ thinking on disparate impact theory. It also stands in great relief to federal statute as disparate impact theory is codified in several federal anti-discrimination laws, including Title VII of the Civil Rights Act of 1991. Moreover, the Supreme Court has recognized disparate impact in rulings over the past thirty-plus years.

With EO 14821, however, all federal agencies are ordered to “deprioritize” enforcement of any and all statutes and regulations, “to the extent they include disparate impact liability.” Through EO 14821, the White House has also provided specific action items for federal agencies and offices. For example, the Attorney General must provide the President with a list of all regulations, rules, orders, and guidance that impose disparate impact liability, and plans for their repeal or amendment within the next 30 days. Further, the Equal Employment Opportunity Commission (“EEOC”) must assess all pending investigations, suits, or positions that rely on disparate impact theory and take appropriate action to end such proceedings in the next 45 days.

The White House has also tasked the EEOC and the Attorney General to jointly issue guidance to employers regarding appropriate methods to “promote equal access to employment.”

In total, EO 14821 could have direct implications for employers. Employers can expect the EEOC to be the frontline for employee related issues regarding disparate impact theory. Employers can also expect legal challenges to the Trump White House’s newest EO as it restricts avenues for relief granted under viable federal statutes and conflicts with Supreme Court precedent.

MBJ will be working with employers to assess their obligations with respect to pending disparate impact claims and employer practices that could have similar impacts. MJB will continue to monitor new developments impacting employers and provide guidance on navigating the increased risks to employers related changes in disparate impact theory liability.

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