

Appendix D

UNIFORM GUIDELINES ON EMPLOYEE SELECTION

The 1978 Uniform Guidelines on Employee Selection Procedures are used by the U.S. EEOC, the U.S. Department of Labor's OFCCP, the U.S. Department of Justice, and the U.S. Office of Personnel Management. These guidelines attempt to explain how an employer should deal with hiring, retention, promotion, transfer, demotion, dismissal, and referral. Under the uniform guidelines, if sued, employers can choose one of two routes to prove they are not illegally discriminating against employees: no disparate impact and job-related validity.

“No Disparate Impact” Approach

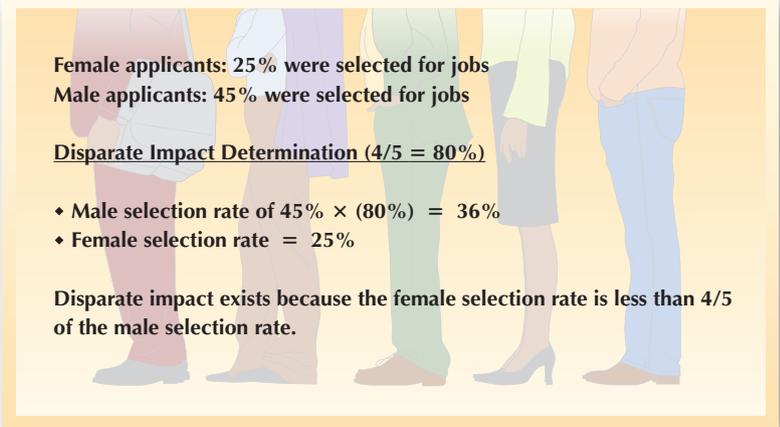
Generally, the most important issue regarding discrimination in organizations is the *effect* of employment policies and procedures, regardless of the *intent* of the employer. *Disparate impact* occurs when protected-class members are substantially underrepresented in employment decisions. Under the guidelines, disparate impact is determined with the *4/5ths rule*. If the selection rate for a protected group is less than 80% (4/5ths) of the selection rate for the majority group or less than 80% of the majority group's representation in the relevant labor market, discrimination exists. Thus, the guidelines have attempted to define discrimination in statistical terms. The use of the statistical means has been researched and some methodological issues have been identified. However, the guidelines have continued to be used because disparate impact is checked by employers both internally and externally.

Internal Metrics for Disparate Impact Internal disparate impact metrics compare the results of employer actions received by protected-class members with those received by nonprotected-class members inside the organization. HR activities that can be checked most frequently for internal disparate impact include the following:

- Selection of candidates for interviews from those recruited
- Pass rates for various selection tests
- Performance appraisal ratings as they affect pay increases
- Promotions, demotions, and terminations
- Identification of individuals for layoffs

The calculation that follows computes the internal disparate impact for men and women who were interviewed for jobs at a firm. In this case, the figure indicates that the selection process does have a disparate impact internally. The practical meaning of these calculations is that statistically, women have less chance of being selected for jobs than men do. Thus, illegal discrimination may exist unless the firm can demonstrate that its selection activities are specifically job related.

Internal Disparate Impact Example



Female applicants: 25% were selected for jobs
 Male applicants: 45% were selected for jobs

Disparate Impact Determination (4/5 = 80%)

- ◆ Male selection rate of 45% × (80%) = 36%
- ◆ Female selection rate = 25%

Disparate impact exists because the female selection rate is less than 4/5 of the male selection rate.

External Metrics for Disparate Impact Employers can check for disparate impact externally by comparing the percentage of protected-class members in their workforces with the percentage of protected-class members in the relevant labor markets. The relevant labor markets consist of the areas where the firm recruits workers, not just where those employed live. External comparisons also can consider the percentage of protected-class members who are recruited and who apply for jobs to ensure that the employer has drawn a “representative sample” from the relevant labor markets. Although employers are not required to maintain exact proportionate equality, they must be “close.” Courts have applied statistical analyses to determine if any disparities that exist are too high.

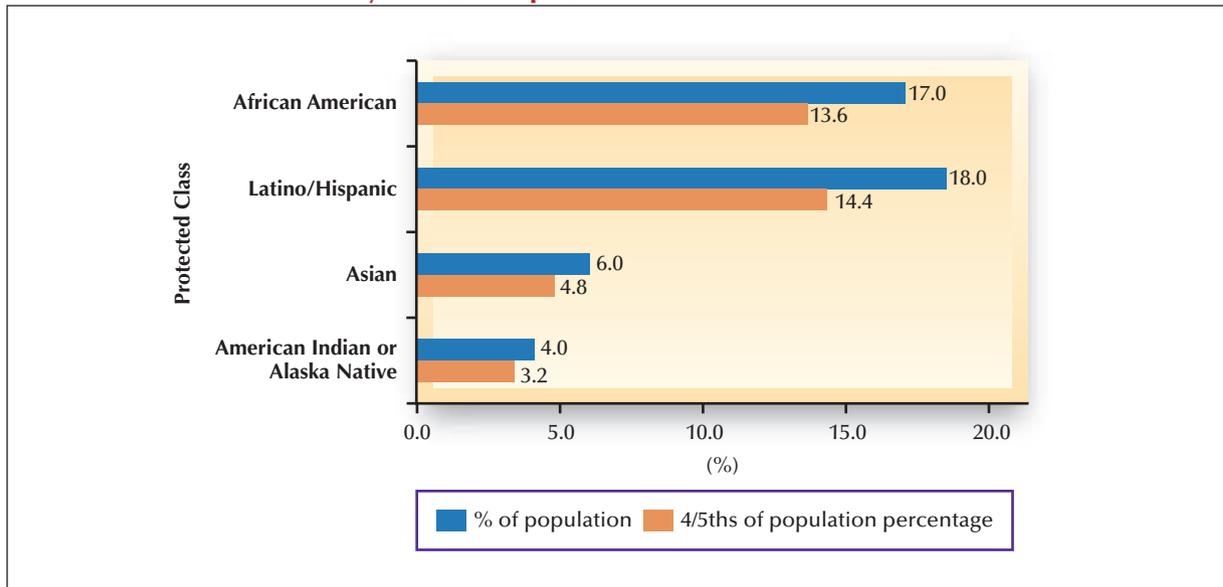
The following illustrates external disparate impact metrics using impact analyses for a sample metropolitan area, Valleyville. Assume that a firm in that area, Acme Company, has 500 employees, including 50 African Americans and 75 Latinos/Hispanics. To determine if the company has external disparate impact, it is possible to make the following comparisons:

Protected Class	% of Total Employees at Acme Company	4/5ths of Group in the Population	Disparate Impact?
African American	10% (50/500)	13.6%	Yes (10% < 13.6%)
Latino/Hispanic	15% (75/500)	14.4%	No (15% > 14.4%)

At Acme, external disparate impact exists for African Americans because the company employs fewer of them than the 4/5 threshold of 13.6%. However, because Acme has more Latino/Hispanic employees than the 4/5 threshold of 14.4%, there is no disparate impact for this group.

Statistical comparisons for determining disparate impact may use more complex methods. HR professionals need to know how to do such calculations because external disparate impact must be computed and reported in affirmative action plans that government contractors submit to regulatory agencies.

Racial Distribution in Valleyville (Example)



Job-Related Validation Approach

Under the job-related validation approach, virtually every factor used to make employment-related decisions is considered an employment “test.” Such activities as recruiting, selection, promotion, termination, discipline, and performance appraisal all must be shown to be job related. Hence, two basic concepts, validity and reliability, affect many of the common means used to make HR decisions.

Validity and Reliability The first concept, *validity*, is simply the extent to which a test actually measures what it says it measures. The concept relates to inferences made from tests. For instance, it may be valid to assume that performance on a mechanical knowledge test may predict performance of a machinist in a manufacturing plant. However, it is probably not valid to assume that the same test scores indicate general intelligence or promotability for a manufacturing sales representative. Another instance would be a general intelligence test; in order for it to be valid, it must actually measure intelligence, and not just a person’s vocabulary. Therefore, an employment test that is valid must measure the person’s ability to perform the job for which she or he is being hired.

Ideally, employment-related tests will be both valid and reliable. *Reliability* refers to the consistency with which a test measures an item. For a test to be reliable, an individual’s score should be about the same every time the individual takes the test (allowing for the effects of practice). Unless a test measures a factor consistently (reliably), it is of little value in predicting job performance.

Validity and Equal Employment

If a charge of discrimination is brought against an employer on the basis of disparate impact, a *prima facie* case must be established. The employer then must be able to demonstrate that its employment procedures are valid and

job related. A key element in establishing job relatedness is conducting a *job analysis* to identify the *knowledge, skills, and abilities (KSAs)* and other characteristics needed to perform a job satisfactorily. In one sense, then, current requirements have done management a favor by forcing employers to use job-related employment procedures.

There are two categories of validity in which employment tests attempt to predict how well an individual will perform on the job. In measuring *criterion-related validity*, a test is the *predictor*, and the measures for job performance are the *criterion variables*. Job analysis determines as exactly as possible what KSAs and behaviors are needed for each task in the job. Two types of criterion-related validity are *predictive validity* and *concurrent validity*.

Content validity is validity measured by a logical, nonstatistical method to identify the KSAs and other characteristics necessary to perform a job. Then managers, supervisors, and HR specialists must identify the most important KSAs needed for the job. Finally, a “test” is devised to determine if individuals have the necessary KSAs. The test may be an interview question about previous supervisory experience, or an ability test in which someone types a letter using a word-processing software program, or a knowledge test about consumer credit regulations.

A test has content validity if it reflects an actual sample of the work done on the job in question. For example, an arithmetic test for a retail cashier might contain problems about determining amounts for refunds, purchases, and merchandise exchanges. Content validity is especially useful if the workforce is not large enough to allow other, more statistical approaches.

Many practitioners and specialists see content validity as a commonsense standard for validating staffing and other employment dimensions, and as more realistic than other means. Research and court decisions have shown that content validity is consistent with the Uniform Guidelines also. Consequently, content validity approaches are growing in use.