



Attorneys General Issue Multistate Guidance on Antidiscrimination Protections

On Sept. 17, 2026, state attorneys general in 14 states issued [Multistate Guidance on Antidiscrimination Protections](#) (the Guidance), which affirms their commitment to enforcing disparate impact protections under state and federal law despite conflicting guidance from the federal government.

Background

In general, Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employers from discriminating against individuals on the basis of their protected trait (i.e., race, color, religion, sex and national origin). Since *Griggs v. Duke Power Co.* (1971), disparate impact discrimination claims, which are challenges to facially neutral employment practices that produce disproportionate effects on a protected group, regardless of the employer's intent, have been permitted under Title VII.

During his second term, President Donald Trump and his administration have taken steps to deprioritize the enforcement of disparate impact protections. For example, on April 23, 2025, Trump issued [Executive Order 14281](#), which ordered federal agencies to deprioritize enforcement of disparate impact liability under Title VII and other federal antidiscrimination laws. Additionally, on June 9, 2026, the Department of Justice issued a memorandum opinion concluding that the Equal Employment Opportunity Commission's longstanding interpretation of disparate impact liability under Title VII is unconstitutional.

Guidance Overview

In response to the Trump administration's deprioritization of disparate impact liability, the attorneys general of Massachusetts, Maryland, New York, California, Delaware, Hawaii, Illinois, Michigan, Minnesota, Nevada, New Mexico, Oregon, Vermont and Washington issued the Guidance affirming their position that disparate impact discrimination remains unlawful under state and federal law. The Guidance asserts that civil rights laws have long provided protections against intentional discrimination and disparate impact and that enforcement of disparate impact liability increases equal opportunities.

The Guidance also identifies promising policies and practices for employers to prevent disparate impact discrimination, including:

- Establishing clear and transparent policies and practices for recruitment, hiring, retention, advancement and termination with buy-in from all levels of leadership in the analysis, planning, implementation and evaluation;
- Ensuring qualifications and criteria for recruitment, hiring, retention, advancement and termination are standardized, focused on skills and experience relevant to the job and communicated clearly;
- Providing equal access to all aspects of professional development, training and mentorship programs that provide clear pathways for career growth; and

HIGHLIGHTS

- On Sept. 17, 2026, 14 attorneys general issued the Guidance to affirm their commitment to enforcing disparate impact protections.
- The Guidance provides best practices for employers, including establishing clear and transparent policies, ensuring fair qualifications and criteria, providing equal access to opportunities, and creating clear protocols for reporting discrimination and harassment.

- Creating clear protocols for reporting discrimination and harassment and more general communication and feedback loops for employees to provide information about their experiences in the workplace.

Employer Takeaways

Although the Guidance does not impose new legal requirements for employers, it affirms that state agencies will continue to enforce disparate impact protections despite the federal government's deprioritization of such discrimination. Therefore, employers may consider reviewing the promising policies and practices outlined in the Guidance and implementing them in their own employment practices.