



Multistate Guidance on Antidiscrimination Protections

Executive Summary

The Attorneys General of Massachusetts, Maryland, New York, California, Delaware, Hawai‘i, Illinois, Michigan, Minnesota, Nevada, New Mexico, Oregon, Vermont, and Washington uphold our state and federal civil rights laws and the protections afforded by our state and federal constitutions. The Trump Administration has sought to narrow or even eliminate these protections through executive actions and misinformation. Given current threats to our civil rights laws, it is critical for all residents and entities in our states to understand the state of the law and know that our civil rights protections remain legal, enforceable, and effective to ensure fairness and equal opportunity for everyone.

Our civil rights laws protect against practices that have the intent or effect of discrimination.

- Our civil rights laws allow us to fight **intentional discrimination**, when actors deliberately treat groups of people differently and deny opportunities based on who we are or where we come from.
- And our civil rights laws prevent unjustified **disparate impacts**—when actions appear neutral on their face, but unnecessarily and unfairly harm or exclude groups of people in practice, even when more inclusive or less harmful options are available.

Disparate impact liability is a longstanding, constitutional tool intended to ensure fairness and equal opportunity for everyone living in this country.

- Our civil rights laws come from generations of courageous struggle to advance equal and fair access to work, education, housing, public spaces, health care, clean air and water, and other essential needs. These laws also protect our right to participate in policymaking and planning that impacts our lives and communities.

- Dating back to the New Deal, protection against practices that have an unjustified disparate impact or effect have been critical to addressing hidden or unintentional biases and barriers to opportunity.

The future of our civil rights laws is at stake.

- The federal government is working to undermine bedrock American values by falsely labeling laws that protect civil rights “illegal”—especially protections against disparate impact discrimination. These efforts misrepresent the law and make it harder to address discrimination.
- The President and federal agencies cannot rewrite laws passed by Congress, nor use executive orders or agency rules or memoranda to change protections provided under the Constitution or federal or state laws.

Civil rights enforcement is foundational to a healthy democracy.

- We enforce civil rights laws to remove unfair barriers and ensure that everyone has an equal opportunity to thrive, individually and within the systems that structure our lives.
- When we remedy and prevent discrimination, those solutions drive progress and innovation that improve health, safety, opportunity, prosperity, and democracy for all. Making it harder to challenge laws, policies, or practices that have a disparate impact blocks these advancements.

Efforts to enforce civil rights protections are legal and effective.

- Civil rights protections ensure that everyone has a fair shot to thrive in our society, including in applying for a job, finding a place to live, securing a loan, participating in school, or accessing health care—and prohibit decision-makers from imposing unjustified and unfair barriers.
- Enforcement actions by state and federal agencies, as well as private litigants, deter discrimination and further a fairer society.
- Public and private entities are responsible for ensuring that their policies and practices are fair for everyone. Tools like data collection, training, and public engagement can help accomplish this goal.

We all have a role to play in advancing fairness and equality. As Attorneys General, we fight every day to safeguard our laws and to ensure all people have equal and fair opportunities to thrive.

As the chief lawyers and law enforcement officers in our respective states, the Attorneys General of Massachusetts, Maryland, New York, California, Delaware, Hawai‘i, Illinois, Michigan, Minnesota, Nevada, New Mexico, Oregon, Vermont, and Washington are committed to eradicating discrimination in all its forms so that everyone has the equal opportunity and freedom to thrive in our society.¹ Given current threats to our civil rights laws, this document sets out to clarify the state of the law; ensure that our residents understand the protections to which they are entitled; and reaffirm our commitment to defend and enforce civil rights laws.

Discrimination has profound impacts on the well-being of individuals, communities, and the nation. Policies and practices that exclude people from equal opportunities based on their real or perceived race, ethnicity, national origin, disability, sex, gender, sexuality, age, religion, or other protected characteristic can create or contribute to inequality and segregation—with generational impacts that hold us all back. At the same time, eliminating discrimination improves health, safety, opportunity, prosperity, and democracy for all. **Anti-discrimination protections are therefore essential to a free and fair society.**

Despite our shared American belief that everyone should be given a fair shot, all too often people are unjustly treated differently or excluded from opportunities to improve their lives and livelihoods because of who they are or where they are from. Discrimination manifests in many forms. In some instances, the discrimination we fight may be **intentional**: people are deliberately treated differently and denied opportunities because of a real or perceived protected characteristic.

In other instances, actions that, on their face, seem neutral, may have a **disparate impact** on certain groups by causing unjustified and unfair harm, or unduly excluding groups of people based on certain protected characteristics. Institutions or people can adopt what appear to be neutral rules that in fact cause unjustified and disproportionate harm on a group, thereby making it harder for impacted groups to access and fully participate in a variety of opportunities, including in the workplace, housing, education, land use decisions, and more.

Our civil rights laws protect against discrimination both when it is intentional and when it occurs by effect. When we take a hard look at the negative consequences—including disparate impact—of policies and practices on groups of people, we can remove unjustified barriers to

¹ This guidance provides general information about existing antidiscrimination law. It is not legal advice, does not create an attorney-client relationship with any office joining this document, and does not address the facts or circumstances of any particular individual or entity. It creates no rights or obligations beyond existing law and does not limit our enforcement discretion. Individuals with questions about their rights, and entities with questions about their obligations, should consult counsel. Individuals who believe they have experienced discrimination may contact the civil rights office of the Attorney General in their state.

accessing opportunities. We can also smoke out well-disguised intentional discrimination or actions rooted in unconscious prejudice that would otherwise remain hidden and unchecked.

Removing barriers to opportunity benefits everyone. Civil rights laws do not pit some people against others. Instead, they ensure that all groups have an equal opportunity to thrive. Equal opportunity helps ensure that all people can be successful and contribute to the success of their family, community, and nation.

But attacks by the federal government jeopardize the future of these civil rights protections. The federal government has recently targeted longstanding civil rights protections, falsely describing them as “illegal” in executive orders, agency memoranda and guidance, grant terms and conditions, and the media. These actions only sow confusion for our constituents—the workers, students, tenants, homebuyers, health care patients, and many other community members these laws are designed to protect. Neither the President nor federal agencies can rewrite laws passed by Congress, nor use executive orders or agency rules or memoranda to change protections provided under the Constitution or federal or state laws.

I. Civil rights laws have long provided protections against intentional discrimination and disparate impact.

President John F. Kennedy in 1963 described the broad purpose of federal laws prohibiting discrimination by recipients of federal funds, saying “[s]imple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.”²

For generations, civil rights laws have recognized two basic forms of discrimination. First, unlawful discrimination occurs when a person or entity purposely or intentionally treats people in a protected group differently, deprives them of opportunities or benefits, or otherwise targets people in a protected group. A policy that says women cannot be police officers would be a clear example of this kind of discrimination.

Second, unlawful discrimination can also occur when a policy or practice applies to everyone but has the effect of discriminating against a particular group. Legal liability under civil rights laws holds people and institutions accountable for unjustified discriminatory effects or disparate impacts (“disparate impact liability”). That justification is context-specific; for example, disparate effects in hiring may be justified by the specific needs of a particular business, profession, or job. When deciding cases involving disparate impact liability, United States courts look to whether the effects of a policy exclude or disadvantage categories of people

² H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

without justification.³ For example, a policy that all police officers must be at least 5 feet 10 inches tall has a discriminatory effect because it excludes 99% of women but includes more than 40% of men.⁴

The Supreme Court first recognized that discriminatory effects were at the core of civil rights protections in a 1971 case called *Griggs v. Duke Power Co.*⁵ In that case, Black applicants for employment at a power plant challenged a requirement that they must have a high school education and pass an intelligence test for jobs where these requirements were not “significantly related to successful job performance.”⁶ The policy excluded Black applicants, segregated the workforce, and confined Black employees to the lowest paying jobs. The Court recognized that it did not matter whether the policy was created with the intention to discriminate against Black people, because the policy had a discriminatory effect.⁷

Since the decision in *Griggs*, courts and administrative bodies have found unjustified discriminatory impact in a broad variety of contexts, including but not limited to:

- A fire department’s use of a written exam with little connection to job responsibilities to screen applicants, which limited job opportunities for Black and Hispanic officers, who routinely scored lower on the exam than white officers, and eliminated candidates who would have been successful firefighters.⁸
- A policy to cancel credit cards of a surviving spouse upon the death of their husband or wife, which disproportionately impacted women.⁹
- The denial, without justification, of a municipal agency’s request to install six bus stops that would have given urban residents access to a suburban mall, which disproportionately harmed Black transit riders.¹⁰
- A municipality’s zoning decision that largely eliminated the potential for affordable rental housing, which Black and Hispanic residents in the area were more likely to need, and perpetuated racially segregated housing patterns.¹¹

³ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

⁴ U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, SECTION 3: HEALTH AND NUTRITION 135 tbl. 205, (2011), <https://www2.census.gov/library/publications/2010/compendia/statab/130ed/tables/11s0205.pdf>. See also *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

⁵ 401 U.S. 424 (1971).

⁶ *Id.* at 426.

⁷ *Id.* at 432.

⁸ *United States v. City of New York*, 731 F. Supp. 2d 291, 295 (E.D.N.Y. 2010).

⁹ *Miller v. Am. Express Co.*, 688 F.2d 1235 (9th Cir. 1982).

¹⁰ Letter from Warren S. Whitlock, Assoc. Adm’r for C.R., U.S. Dep’t of Transp., Fed. Highway Admin., to Michael Cornell, City Manager, City of Beavercreek, Ohio et al. (June 26, 2013), https://www.justice.gov/sites/default/files/crt/legacy/2014/07/07/DOT_fhwa_decision-lead_v_city_of_beavercreek_june_2013.pdf.

¹¹ *MHANY Mgmt., Inc. v. County of Nassau*, No. 05-cv-2301, 2017 WL 4174787 (E.D.N.Y. Sept. 19, 2017).

- A school district’s use of an English-only policy without supplemental English-language instruction, which limited educational opportunities for non-English speaking students of Chinese descent.¹²

Today, cases brought under a disparate impact theory of liability have consistently succeeded in the federal courts under various statutes, including Title VII of the Civil Rights Act of 1964, as amended, and the Fair Housing Act. Recent Supreme Court decisions have narrowed what enforcement mechanisms agencies and private citizens may use to redress disparate impacts,¹³ but those decisions do not disturb the legality of disparate impact liability itself.

All federal and state anti-discrimination laws protect against intentional discrimination, and most also prohibit effects-based discrimination in some form. When these laws are enforced, they not only prevent significant harm, but, in the search for solutions, they can also drive progress and innovations to policies and practices that benefit everyone.

II. Enforcement of disparate impact liability increases opportunity across many sectors.

Investigation and enforcement actions by state and federal agencies, as well as litigation and other actions by private parties, have historically served to deter and rectify violations of anti-discrimination laws. Administrative complaints, investigations, and litigation are critical to illuminate and curb the most severe harms of discrimination and ultimately facilitate equality of opportunity and fairer outcomes. For example, in communities around the country, women who have survived domestic violence have relied on litigation and administrative investigations to address the unjustified disparate impact on women of local ordinances that threaten the housing stability of tenants who make repeated calls to law enforcement.¹⁴ Enforcement actions have also long confronted the discriminatory effect of unjustified language access barriers,¹⁵ thereby

¹² *Lau v. Nichols*, 414 U.S. 563 (1974).

¹³ See e.g., *Alexander v. Sandoval*, 532 U.S. 275 (2001) (determining that disparate impact regulations promulgated under Title VI of the Civil Rights Act of 1964 are not enforceable by private litigants).

¹⁴ See e.g., *Rosetta Watson v. Maplewood*, No. 4:17-cv-01268, 2018 WL 2184347 (E.D. Mo. May 11, 2018); *Nancy Markham v. City of Surprise*, No. 215-cv-0196 (D. Ariz. July 11, 2016); U.S. Dep’t of Housing and Urban Dev. (HUD), *HUD And Philadelphia-Area Borough Settle Allegations of Housing Discrimination Against Victims of Domestic Violence*, HUD ARCHIVES (Oct. 2, 2014), <https://archives.hud.gov/news/2014/pr14-121.cfm>. See also 1985 Op. Att’y Gen. N.Y. 45 (Nov. 22, 1985) (opining that a categorical refusal to rent to victims of domestic violence based on the fear of harm to other tenants would violate the fair housing provisions of the state Human Rights Law because of its disparate impact on women).

¹⁵ Failure to provide language access can also constitute intentional discrimination. *Montes v. Vail Clinic, Inc.*, 497 F.3d 1160, 1170 (10th Cir. 2007) (“Language may be used as a covert basis for national origin discrimination.” (citation omitted)); *Yniguez v. Arizonans for Off. English*, 69 F.3d 920, 947 (9th Cir. 1995) *vacated on other grounds*, 520 U.S. 43 (1997) (“[L]anguage is a close and meaningful proxy for national origin.”)

expanding access to basic needs from prescriptions¹⁶ to post-disaster resources.¹⁷ And enforcement of anti-discrimination laws by state attorneys general and private litigants have recently shed light on the embedded biases in artificial intelligence and algorithmic decision-making systems—such as those used by lenders,¹⁸ landlords,¹⁹ and employers²⁰—that can cause discriminatory effects based on race, sex, or age.²¹ Administrative complaints and enforcement actions can bring a range of stakeholders to the table in search of collaborative solutions. Investigations into the unjustified disparate impacts associated with transportation projects, environmental permitting, and access to municipal services have created opportunities for funding and initiatives to support affordable housing and flood mitigation;²² more robust public participation, language access, and environmental analysis;²³ and initiatives to improve public health and access to wastewater infrastructure.²⁴

III. Taking proactive measures to remove unjustified barriers and ensure more equitable opportunities is legal, cost-effective, and benefits everyone.

Public and private entities can lawfully engage in proactive measures to stamp out discrimination in all its forms, fostering sound decision-making in the process. State and local agencies can facilitate and encourage proactive efforts to further fairness through regulation, guidance, technical assistance, and public outreach, as well as measures tied to public funding that lay out steps to avoid, minimize, or reduce the impact of practices and policies that might result in discrimination. Businesses, non-governmental organizations, local governments, and

¹⁶ Kirk Semple, *Pharmacies Agree to Provide Prescription Data in Many Languages*, NY TIMES (Apr. 22, 2009) <https://www.nytimes.com/2009/04/22/nyregion/22translate.html>.

¹⁷ Emily Schwing, *FEMA Under Civil Rights Investigation After Sending ‘Unintelligible’ Merbok Relief Info to Alaska Native Communities*, KTOO (Oct. 11, 2023), <https://www.ktoo.org/2023/10/11/fema-under-civil-rights-investigation-after-sending-unintelligible-merbok-relief-info-to-alaska-native-communities/>.

¹⁸ Press Release, Mass. Off. of the Att’y Gen., AG Campbell Announces \$2.5 Million Settlement with Student Loan Lender for Unlawful Practices Through AI Use, Other Consumer Protection Violations (July 10, 2025), <https://www.mass.gov/news/ag-campbell-announces-25-million-settlement-with-student-loan-lender-for-unlawful-practices-through-ai-use-other-consumer-protection-violations>.

¹⁹ *Louis v. SafeRent Solutions, LLC*, 685 F. Supp. 3d 19 (D. Mass. 2023) (finding that plaintiffs had plausibly alleged that a tenant-screening tool’s algorithm disparately impacted Black and Latino applicants).

²⁰ *Mobley v. Workday, Inc.*, 740 F. Supp. 3d 796 (N.D. Cal. 2024) (finding that the plaintiff had stated disparate impact discrimination claims based on race and age, as well as disability).

²¹ N.J. Off. of the Att’y Gen., Div. on C.R., *Guidance on Algorithmic Discrimination and the New Jersey Law Against Discrimination* (Jan. 2025), [2025-0108_DCR-Guidance-on-Algorithmic-Discrimination.pdf](https://www.dcr.state.nj.us/2025-0108_DCR-Guidance-on-Algorithmic-Discrimination.pdf).

²² Voluntary Resolution Agreement, U.S. Fed. Highway Admin.–Tex. Dep’t of Transp. (Mar. 6, 2023), <https://www.txdot.gov/content/dam/docs/district/hou/nhhip/nhhip-vra-signed.pdf>; Voluntary Resolution Agreement, U.S. Fed. Highway Admin.–Tex. Dep’t of Transp. (Dec. 17, 2015), https://highways.dot.gov/sites/fhwa.dot.gov/files/VoluntaryResolution_Agreement.pdf.

²³ Press Release, Mich. Dep’t of Env’t, Great Lakes, and Energy, Eastside Detroit Community Members and EGLE Reach Civil Rights Agreement (Aug. 29, 2024), <https://www.michigan.gov/egle/newsroom/press-releases/2024/08/29/civil-rights-agreement>.

²⁴ Dennis Pillion, *A Year After Historic Civil Rights Settlement, Alabama Slowly Bringing Sanitation Equity to Rural Black Communities*, INSIDE CLIMATE NEWS (Oct. 12, 2024), <https://insideclimatenews.org/news/12102024/alabama-sanitation-equity-rural-black-communities/> (describing a now rescinded interim resolution agreement between federal agencies and state and local public health agencies).

other individuals and entities have many tools available to advance the goals and values of our civil rights laws. Data collection, analysis, and stakeholder engagement are critical for evaluating the impacts of policies and programs across the public and private sectors, and assisting in identifying potential disparities, unintended consequences, and unmet needs for everyone. Similarly, education and training are fundamental to establishing and maintaining clear and consistent anti-discrimination practices.

By identifying and preventing unlawful discrimination on the front end, proactive measures can also eliminate the need for enforcement action. Thus, engaging in proactive measures can be the most efficient, cost-effective, and collaborative approach to identify gaps in access to opportunity, anticipate and prevent potential harms, and improve service delivery and systems that benefit everyone. The list below includes a sample of promising policies and practices that can proactively further the goals of our civil rights laws and are applicable to both the public and private sectors.

Housing and Lending

- Conducting analyses of machine learning and algorithm-based lending and tenant screening tools throughout their lifecycle—from deployment, development, and application—to identify discriminatory outcomes and to refine algorithms to include more relevant factors in evaluating credit worthiness.
- Regularly assessing marketing strategies and lending and tenant screening policies and tools to look for bias and to eliminate barriers to housing.

Language Access

- Determining and planning for language access before it is needed, including by developing internal language access protocols, understanding local language needs and identifying the most common languages in relevant areas, identifying vital documents requiring translation, preparing public facing signage and documents in plain language to facilitate effective translation, and dedicating sufficient time and resources to allow for effective interpretation.
- Ensuring effective interpretation and translation by contracting with qualified interpreters, while also expanding accessibility of public services through hiring bilingual and multilingual staff.

Disaster and Emergency Preparedness

- Taking a “whole community” approach that includes people most directly impacted in disaster planning to ensure that transportation, shelter, communications, recovery, emergency power, and other essential support systems meet a broad range of access needs and vulnerabilities.
- Using planning to forge relationships between residents, policymakers, emergency managers, first responders, and other stakeholders in advance of emergency and disaster scenarios.

Siting and Permitting

- Conducting preventative analysis when siting and permitting infrastructure and industrial uses to determine and avoid or reduce the severity of potential negative impacts, taking into account how new facilities may worsen existing burdens on the impacted community.
- Facilitating inclusive public participation in planning and decision-making by addressing linguistic, institutional, cultural, economic, historical, physical, or other barriers to participation. This can include accounting for convenience and accessibility when deciding meeting times and locations, coordinating with local community and faith-based institutions on outreach, and providing different formats to submit feedback.

Employment

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

Education

- Collecting and reviewing demographic data regarding educational funding, resource allocation, teacher quality, and other decisions to identify and analyze differences among students attending schools and ensure that all students, regardless of membership in any protected category, have equal access to high-quality schools.
- Implementing school- or district-wide codes of conduct that are objective to avoid decision-making influenced by bias and stereotypes. Setting forth evidence-based alternatives to exclusionary disciplinary actions to hold students accountable and create a safer school environment while minimizing loss of instructional time.
- Implementing across the board strategies for classroom management that include de-escalation, conflict resolution, and positive behavioral strategies and supports, which, when implemented consistently, create a safer environment for all students while reducing disparate exclusionary disciplinary actions that result in negative education outcomes.
- Ensuring that all students, regardless of protected group, have equal access to challenging college prep courses and high-quality high schools, so that everyone has an equal opportunity to access higher education.