



Housing Choice Education Partnership

DISPARATE IMPACT

WHAT IS IT?

Disparate impact is a way of proving a violation of civil rights laws. It is sometimes called “discriminatory effect” or “adverse impact.” It is different from “discriminatory intent” or “discriminatory treatment” because those methods of proving a violation of the law require proof of a discriminatory motive or intent. Disparate impact, on the other hand, just looks at impact of a policy that is neutral on its face. For example, if an employer runs an advertisement that says, “We only hire men,” that advertisement, on its face, discriminates against women. If, however, the employer runs an advertisement that says, “We only hire people six feet tall or taller,” that advertisement is neutral on its face. However, it may be a violation of the law based upon the disparate impact that the hiring criterion has on women.

DOES OREGON HAVE A DISPARATE IMPACT LAW FOR HOUSING?

Yes. ORS 659A.425.

The Oregon law defines “facially neutral housing policy” to mean “a guideline, practice, rule or screening or admission criterion, regarding a real property transaction that applies equally to all persons.”

A Court or BOLI (the state Bureau that investigates employment and housing discrimination cases) may find discrimination if a neutral housing policy is applied to member(s) of a protected class in residential tenancy transaction and the policy adversely impacts member(s) of the protected class to a greater extent than it impacts persons generally.

In determining whether a policy is unlawful under this provision, the Court will consider:

- (a) the significance of the adverse impact on the protected class;
- (b) the importance and necessity of any business purpose for the facially neutral housing policy; and
- (c) the availability of less discriminatory alternatives for achieving the business purpose for the facially neutral housing policy.

WHAT DOES DISPARATE IMPACT HAVE TO DO WITH THE NEW SOURCE OF INCOME LAW?

There are several policies that may be subject to disparate impact analysis in light of the new law that makes it unlawful to discriminate against someone because of their source of income, which now includes payments from a Section 8 voucher or other government housing assistance. That does not mean that a violation would be found or not found, but that a court would weigh the above three factors with the neutral policy at question.

HERE ARE SOME EXAMPLES:

- A policy that requires an applicant to have income that is 2x or 3x the total rent, as opposed to the tenant's portion of the rent;
- A policy that will deny an application if the property fails a housing authority inspection;
- A policy that states the landlord will not rent to anyone that requires a housing authority inspection of the property before they move in;
- A policy that states that a landlord will not wait a few days for a housing authority inspection;
- A policy that states the landlord only enters into month-to-month tenancies and will never enter into a six month or year-long lease;
- A policy that says the landlord will not accept security deposit payments from third parties;
- A policy that says the landlord will not accept rent payments from third parties or from two different places.