

## **Selection Procedure**

The term selection procedure encompasses the use of aptitude testing, physical evaluations, educational credentials, employment experience, training programs, probationary terms, interviews, and application forms to evaluate prospective candidates. These guidelines apply to employers, employment agencies, testing organizations, and labor unions.

The employer's right to investigate the employee's background including past criminal records is based on the employer's showing of a justifiable business necessity.

## **Disparate Impact**

Disparate impact occurs when an employer has a neutral policy that applies to all employees but when you apply the policy it disproportionately affects one of the protected classifications such as race, gender, religion, national origin, and color.

To eliminate a disparate impact, records must be kept of the number of each minority group and gender that apply and the number of each group selected. If the percentage of minorities selected is at least 80-percent of the percentage of whites selected, there is no adverse effect. If the 80-percent rule is not met, then a detriment in employment selection exists against the particular group of minority or women applicants.

## **Disparate Treatment**

Disparate treatment arises when an individual is not selected because of a suspect classification. Whereas disparate impact is directed against the group, disparate treatment is directed against the individual.

## **Investigation and Record-Keeping**

To properly conduct an investigation, the EEOC has the right to evidence, which has a bearing on the alleged unlawful employment practice. This would include the right of access to documentation, as well as to the coworkers, superiors, and subordinates of the employee alleging a Title VII violation for the purpose of questioning them.

Employers are obligated to keep records relating to their methods of selection, compensation, promotion, training, and termination of employees. Test scores and the chronological order of applications for hiring, training, and promotion, must be part of the record keeping.

These records must be made available to the EEOC to enable them to determine whether unlawful employment practices have been committed. An employer may seek an exemption from the EEOC if it can prove the burden of record keeping presents undue hardship. A notification of excerpts of Title VII is required to be posted by each employer in a conspicuous setting to apprise current employees as well as applicants of the existence of Title VII.

Record keeping can be burdensome, especially for small firms that do not have a human resources department. In addition to keeping records denoting the number of persons who applied and the number of persons who were selected in each job category for each suspect classification, similar record-keeping must be kept for promotions and terminations as well.