

Disparate Impact Discrimination Claim Analysis



New Jersey's Law Against Discrimination (LAD) prohibits disparate impact discrimination based on a protected characteristic. Disparate impact discrimination occurs when a seemingly neutral practice or policy of a covered entity (employers, housing providers, and places open to the public) results in a disproportionately negative effect based on a protected characteristic, even where there is no intent to discriminate.

An impacted individual may file a complaint with DCR (referred to as a "Complainant") or in Superior Court against a covered entity (referred to as a "Respondent"). This resource is intended to provide an introduction to the 3 questions asked by DCR and the courts when analyzing whether a practice or policy has an unlawful disparate impact. This document does not provide legal advice. Read DCR's Disparate Impact Regulations [here](#) and view our other resources or file a complaint at [NJCivilRights.gov](https://njcivilrights.gov).

Question 1: Did the Complainant Identify a Practice or Policy?

First, the **Complainant** bears the burden of (is responsible for) identifying a practice or policy that has a disproportionately negative effect on them due to their protected characteristic (traits such as race, religion, gender, disability, national origin, and others*).



If the **Complainant** is unable to do so, DCR's analysis stops here. There is no disparate impact liability.



If the **Complainant** is successful in meeting their burden, DCR's analysis moves to **Question 2**.

** The LAD additionally protects against discrimination based on color, nationality, ancestry, pregnancy, breastfeeding/chestfeeding, sexual orientation, gender identity, gender expression, marital status or domestic partnership/civil union status, and liability for military service, as well as in some contexts: familial status (housing); source of lawful income used for rental or mortgage payments (housing); age (employment); atypical hereditary cellular or blood trait, genetic information, and the refusal to submit to a genetic test or make available to an employer the results of a genetic test (employment).*



Question 2: Is the Respondent's Practice or Policy Necessary?

The burden (responsibility) shifts to the **Respondent** to establish that the challenged practice or policy is necessary to achieve a substantial, legitimate, nondiscriminatory interest. The **Respondent** must show that the practice or policy achieves the stated goal.



If the **Respondent** is unable to do so, DCR's analysis stops here. There is no legitimate justification for the practice/policy, so the **Respondent** is legally responsible for the disparate impact caused by the practice or policy.



If the **Respondent** is successful in meeting their burden, DCR's analysis moves to **Question 3**.

Question 3: Is there a Less Discriminatory Alternative?

The final question asks whether there is a less discriminatory alternative to the challenged practice or policy that would achieve the **Respondent's** substantial, legitimate, nondiscriminatory interest. Which party bears the burden (is responsible) for answering this question depends on the type of claim.

In housing discrimination claims, the burden remains with the **Respondent**.



If the **Respondent** is unable to show that there is no less discriminatory alternative, they are legally responsible for the disparate impact caused by their practice or policy.



If the **Respondent** establishes that there is no less discriminatory alternative, they are not legally responsible for the disparate impact caused by the practice or policy.

In all other types of discrimination claims (employment, places of public accommodation), the burden shifts back to the **Complainant**.



If the **Complainant** establishes that there is a less discriminatory alternative, the **Respondent** is legally responsible for the disparate impact caused by their practice or policy.



If the **Complainant** is unable to show that there is a less discriminatory alternative, the **Respondent** is not legally responsible for the disparate impact caused by the practice or policy.

For an example, see DCR's resource on [Disparate Impact Discrimination in School Discipline](#).