Comparison of Discrimination Theories:

Methods of Proving Particular Types of Discrimination

(e.g., race, gender, age, disability)

Theory:	Disparate Treatment	Adverse Impact
Need to show intent?	Yes	No
Plaintiff's ***"Prima facie case"*** **(raises <u>inference</u> of discrimination if proved):**	**Use direct evidence of differential treatment (e.g., of "stupid" discrimination),** <u>**or**</u> **show** **(per *McDonnell-Douglas v. Green*) that Plaintiff** **(1) is a member of some protected class;** **(2) was qualified for the job/promotion/raise etc.;** **(3) was turned down for the job/promotion/raise etc.;** **(4) job remained open, and/or was filled by individual not a member of that class**	**Show that a statistical disparity occurs in the <u>effects</u> of an employment practice ("test") even if practice is neutral on its face** **(i.e., show that members of some protected class are disproportionately excluded or burdened;** **use the "4/5 rule", per the EEOC's Uniform Guidelines on Employee Selection Procedures)**
Employer's defense:	**Employment (e.g., selection) decision based on legitimate, non-discriminatory reason <u>or</u> (rarely) a "BFOQ" (i.e., show that membership or non-membership in protected class is a *bona fide* occupational qualification for doing the job)**	**The employment practice is <u>valid</u> (i.e., bears a "manifest relationship" with job performance, consistent with "business necessity"; see below)**
Plaintiff's rebuttal:	**Reason offered was merely a "pretext" for discrimination**	**Other valid procedure exists which would not have as bad an impact**