

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 <i>"Prima facie case"</i> (raises <u>inference</u> of discrimination if proved):	Use direct evidence of differential treatment (e.g., of "stupid" discrimination), <u>or</u> show (per <i>McDonnell-Douglas v. Green</i>) 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 <i>bona fide</i> 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