

# LABOR AND EMPLOYMENT

## INFORMATION MEMO

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### New York State Human Rights Law Amended to Include Disparate Impact in Employment Discrimination Claims

On Dec. 19, 2025, Governor Kathy Hochul signed Senate Bill S8338 into law amending the New York State Human Rights Law (NYSHRL) to expressly recognize “disparate impact” claims in employment discrimination claims.

While New York courts had already recognized disparate impact liability, this amendment formally codifies the standard and aligns the NYSHRL with federal law (Title VII) and the New York City Human Rights Law.

#### What This Means

The amendment imposes liability where a facially neutral policy or practice has discriminatory effect on a protected group—regardless of any discriminatory intent. In other words, employers may face liability even absent a discriminatory motive if a policy disproportionately impacts a protected class. The law applies to conduct occurring on or after Dec. 19, 2025.

#### Legal Framework

Under the new subdivision of Executive Law §296:

- **Employee’s Burden:** a plaintiff must show that a specific policy or practice has a disparate impact on a protected group, either in fact or predictably.
- **Employer’s Burden:** if a disparate impact is shown, the employer must establish a “legally sufficient justification” by demonstrating that:
  1. the policy is job-related and consistent with a business necessity; and
  2. the business necessity cannot be achieved through a less discriminatory alternative. The justification must be supported by evidence—not speculation.
- **Employee’s Rebuttal:** even if the employer meets this burden, an employee may still prevail by showing that a less discriminatory alternative exists.

#### Practical Takeaways for Employers

- Employers should exercise caution in their increasing use of artificial intelligence (AI) in personnel or business decisions, as algorithmic screening, hiring, firing, promotion, discipline or compensation systems may unintentionally produce statistically disparate outcomes that give rise to disparate impact liability if not validated as job-related, consistent with business necessity and assessed for less discriminatory alternatives.
- Policies that appear neutral on their face can still create liability if they disproportionately affect protected groups.
- Employers should ensure that key policies (e.g., hiring criteria, background checks, compensation structures, scheduling practices) are tied to legitimate business needs and supported by evidence.
- Where possible, employers should evaluate whether less discriminatory alternatives are available.
- Documentation supporting the business necessity of policies will be critical in defending potential discrimination claims.

**Next Steps**

Given the expansion and codification of disparate impact liability, employers should consider proactively reviewing their employment practices, policies and job classifications to identify potential risk areas and ensure compliance with evolving state and local standards.

If you have any questions or would like any additional information regarding best practices or other legal developments, please contact [Sam Dobre](#), [Jason Kaufman](#), [Camisha Parkins](#) or any attorney in Bond's [labor and employment practice](#).

