

# Long-Standing Discrimination Protections Are Proposed to Change in Final Days of Trump Administration

By **Monica L. Frantz**

In the final days of the Trump Administration, the Department of Justice (DOJ), through the federal rule-making process, is aiming to scale back certain protections for protected classes that currently exist under Title VII of the Civil Rights Act of 1964. The change to existing law would come through revisions to regulations interpreting Title VII which would alter how the Justice Department enforces Title VII moving forward.

Title VII is a federal law which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. For decades, Title VII has been interpreted to prohibit actions that have a “disparate impact” on a protected group. Disparate impact is discrimination that occurs when a policy or practice that appears neutral actually has a discriminatory effect on a protected class, such as an employment exam that results in disproportionately more men receiving promotions than women. To prove disparate impact, the aggrieved party need not establish that the discrimination was intentional. The DOJ has proposed changes to the Title VII regulations which seek to eliminate the “disparate impact” theory of discrimination. Under the proposed regulations, only intentional discrimination would be prohibited by law.

Proponents of the changes to the regulations believe that proof of discrimination should require proof of an intent to treat others less favorably. Critics, on the other hand, maintain that the disparate impact analysis is crucial, because proving an intent to discriminate is oftentimes difficult and, even if discrimination was not intentional, organizations should be held responsible for any resulting discriminatory effects of their policies and practices.

The proposed regulatory changes, if finalized, would have a significant impact on civil rights protections for protected groups under Title VII. Under the new proposal, recipients of federal funds—like employers, housing programs, and schools—could effectively enact policies or practices that “disparately impact” protected groups so long as there is no intent to discriminate.

Even if the Trump administration moves to finalize the regulations in the coming days, however, the incoming Biden administration will very likely act swiftly to begin the cumbersome process of attempting to reverse the changes after the new administration is sworn in.

Roetzel will continue to monitor and report on the status of proposed rule changes to Title VII. If you have any questions, please contact one of the listed Roetzel attorneys.

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