

Civil Rights Act of 1991

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of BUSINESS NECESSITY and JOB-RELATED-NESS enunciated in *GRIGGS V. DUKE POWER*, 401 US 424 (1971). A new shifting BURDEN OF PROOF scheme resulted:

- 1 the plaintiff must demonstrate through relevant statistical comparisons that a particular employment practice used in selecting or promoting employees causes a disparate impact;
- 2 the defending employer may then proceed to demonstrate that a particular employment practice does not cause the disparate impact; or
- 3 the defending employer must demonstrate (with the burden of persuasion, not just production of evidence) that the challenged practice is job-related for the position in question and consistent with business necessity.

Victims of discrimination are entitled to be made whole, including backpay and BENEFITS, less their interim earnings. In addition to these remedies, under the Civil Rights Act of 1991, victims of intentional discrimination can now receive compensatory and punitive damages capped for sex and religious discrimination, depending on the size of the employer.

The Civil Rights Act of 1991 makes it an unlawful employment practice for an employer to adjust scores, use different cutoff scores (*see* CUTOFF SCORE), or otherwise alter the results of employment tests on the basis of race, color, religion, sex, or national origin. This provision addresses the so-called “race norming” issues, whereby the results of hiring and PROMOTION tests are adjusted to assure that a minimum number of minorities are included in application pools.

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David P. Twomey

Between 1989 and 1991 the US Supreme Court reoriented Title VII jurisprudence to favor employers. The Civil Rights Act of 1991 (CRA 1991) modified or reversed these decisions, augmented the types of damages available to plaintiffs, and provided for jury trials in cases of intentional DISCRIMINATION.

In a DISPARATE TREATMENT (intentional discrimination) case, the plaintiff must prove discriminatory intent. Section 105 of CRA 1991 set forth the burden of proof for DISPARATE IMPACT (facially neutral employment practices that have an adverse impact on a protected group) cases, codifying the concepts

classification

Michael A. McDaniel and David J. Snyder

Classification is concerned with maximizing institutional outcomes by placing individuals who are already hired into one of two or more treatments (i.e., jobs) on the basis of multiple criteria. In classification, one has many predictors in which one or more corresponds to at least