

Discrimination

Expert Testimony

Discrimination

Otherwise similar people differing in protected characteristics are treated differently.

Disparate impact doctrine

An employer's policies, practices, or procedures have a disproportionately negative effect on members of a protected group, such as a particular race, gender, age group, or ethnic group, even if the policy or practice itself does not explicitly discriminate against them.

Distinct from *disparate treatment*. Can be shown with statistical tools, even in absence of witness testimony.

Key terms

treated differently We are looking for a significant difference between male and female earnings.

protected characteristics It is ok to value high performance, but not gender per se.

otherwise similar Having the same productivity-relevant characteristic.

Challenges

- 1 Who is similar? Many dimensions: no-one is.
- 2 What outcomes matter? Different, incompatible definitions of fairness.
- 3 What characteristics are relevant? Human judgement necessary: relevant vs irrelevant, protected vs unprotected.

Are these characteristics relevant? Or are they a pretext for discrimination?

- college degree
- experience in high school debate club
- score on aptitude test
- score on HR interview