

## EEOC Guidelines on Performance Evaluations

### Section 202.6 - Adverse Impact Standard (The Four-Fifths Rule)

The Four-Fifths Rule (80% Rule): A selection rate for any protected group that is less than 80% (4/5ths) of the rate for the group with the highest rate constitutes evidence of adverse impact.

Example: If 50% of male applicants are selected, then at least 40% ( $50\% \times 0.8$ ) of female applicants must be selected to avoid adverse impact.

Application to Performance Reviews: If males receive high performance ratings at a 70% rate, females must receive high ratings at minimum 56% ( $70\% \times 0.8$ ) to avoid adverse impact. Ratios below 0.8 create legal liability under Title VII of the Civil Rights Act.

### Section 202.9 - Gender-Based Discrimination

Employers must ensure performance evaluation criteria are applied consistently regardless of sex. Use of gender-stereotyped language (e.g., describing women as "supportive" vs men as "leaders") can constitute evidence of discriminatory intent.

Performance evaluations must be:

1. Based on job-related criteria
2. Applied uniformly across all employees
3. Free from stereotypical assumptions about gender roles
4. Documented with specific, observable behaviors

Legal Precedent: Price Waterhouse v. Hopkins (1989)

The Supreme Court found that gender-stereotyped evaluations violated Title VII. Ann Hopkins was denied partnership at Price Waterhouse despite strong performance. Partners' comments included that she needed to "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry."

The Court held that employment decisions based on sex stereotypes violate Title VII, even when other legitimate factors are also present.

Key Takeaway: Using gender-coded language in performance reviews (e.g., "abrasive" for assertive women, "collaborative" as faint praise) can constitute evidence of discrimination.

#### Statistical Analysis in Discrimination Cases

Courts routinely accept statistical analysis as evidence of discrimination.

Organizations should:

- Monitor performance rating distributions by protected class
- Analyze language patterns in written reviews
- Document remediation efforts when disparities are found
- Implement bias training and structured evaluation processes

Failure to address documented bias patterns can result in:

- Class action lawsuits
- EEOC investigations
- Settlements ranging from hundreds of thousands to millions of dollars
- Reputational damage and recruitment challenges