Compare and contrast disparate treatment and disparate impact

Compare and Contrast Disparate Treatment and Disparate Impact: Disparate Treatment and Disparate Impact are two theories under VII of the United States Civil Rights Act. Together, they were intended to prohibit discriminatory actions on part of employers toward racial, sexual or class minorities. The theory of Disparate Treatment first came into judicial discourse in the Griggs v. Duke Power Co. During and after this case, the term “ business necessity” became central to deciding such cases. If business managers treat minorities in a disparate manner in the absence of compelling business needs, then their action can be construed as discriminatory and in violation of provisions under Title VII. In all disparate treatment cases, “ whether the issue is the truth or falsity of the employer's reason for its action, or the co-existence of legitimate and illegitimate motives, whether the plaintiff puts on direct or circumstantial evidence, or both, the issue at the liability stage is simply whether the plaintiff has shown, by a preponderance of the evidence, that discrimination was a motivating factor in the employment decision.” (Drachsler, 2005, p. 230) The Civil Rights Act of 1991, further extended these provisions and consolidated the list of prohibitions. But the application of Disparate Treatment theory to any given case is never straight-forward, for management decisions are based upon so many factors, with prejudice and discrimination (if any) often playing out in subtle and indirect ways. Judge Magnuson elaborated on 1991 amendments thus: “ Absent from the statute is the requirement that discrimination be a " substantial" factor, a " but-for" factor, or the necessary and sufficient cause of the employment decision. Instead, Congress unambiguously required that discrimination be " a" motivating factor in the employment decision. Any analytical paradigm that requires greater proof to

prevail on liability contradicts the express language of the statute." (Drachsler, 2005, p. 230) The Disparate Impact theory, on the other hand, holds that " when an action has a disproportionate effect on some group (racial, ethnic, gender, whatever), it can be challenged as illegal discrimination--even if there was no discriminatory intent". (Clegg, 2000, p. 79) To the extent that management's decisions turns out to be unfavorable to a particular group, they are found guilty under this title. As one can see, this theory is highly problematic for business managers, for often, business decisions involve compromise of some sort and it is impossible to please all employees. The flaw in this theory is that it punishes people even when they don't have malevolent intent and pressurizes them into taking politically deliberated decisions, which can prove to be counter-productive to the interests of the organization. Since the 1960s many lawsuits were brought forward by disgruntled employees against their managements under this clause. But as is the general legal consensus, this theory, through its very composition, strongly favors the plaintiff. As a result, most verdicts favor the plaintiffs, irrespective of whether there is a genuine grievance on their part. Interestingly, the popularity of disparate-impact lawsuits in Corporate America, where the concept began, has actually declined since 1991, due to compensation and punitive damages provided under Disparate Treatment laws. But outside the workplace, disparate-impact claims are increasing steadily. Works Cited Barnes, Mario L., and Erwin Chemerinsky. " The Disparate Treatment of Race and Class in Constitutional Jurisprudence." Law and Contemporary Problems 72. 4 (2009): 109+. Clegg, Roger. " The Bad Law of " Disparate Impact"." Public Interest Wntr 2000: 79. Drachsler, David A. " Proof of Disparate Treatment under Federal Civil Rights Laws." Labor

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