**Study Aid #8 : Summary of Selected Laws and Legal Principles That Relate to Performance Appraisals and Potential Liability for Employment Discrimination**

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| **Law or Legal Principle** | **Summary of Law or Legal Principle** | **Relationship to Performance Appraisals and Potential Liability for Employment Discrimination** |
| Disparate Treatment | Intentional discrimination: improper distinctions among individuals based on protected status (e.g., age, race, sex) | Results of invalid or subjective performance appraisals may be used to justify improper employment decisions that are based on discriminatory motive or bias |
| Disparate (Adverse) Impact | Unintentional discrimination: arises from employment practices that appear neutral but adversely affect those with protected status | Invalid appraisal practices or absence of safeguards can operate to exclude qualified protected class members from employment opportunities more often than non-members |
| Title VII of the Civil Rights Act of 1964 (Title VII) | Outlaws’ discrimination based on race, color, sex, religion, or national origin | Provides protection against use of appraisal procedures and results to perpetrate discrimination |
| State Fair Employment Practices Acts | Provides protection similar to Title VII; varies by state | Similar to above |
| Equal Pay Act of 1963 | Prohibits gender-based differences in pay for equal work, subject to limited exceptions | Appraisal results can be used to invoke and justify exceptions (e.g., merit­ based pay distinctions) |
| Civil Rights Act of 1991 (CRA 1991) | Allows jury trials, compensatory and punitive damages in discrimination cases; alters burden of proof and other technical aspects of some cases | Reduces plaintiff's burden of proving that particular practice of employer (e.g. performance appraisals) caused discrimination if practices are incapable of separation for analysis |
| Age Discrimination in Employment Act | Prohibits employment discrimination based on age of 40 or over | Provides protection against use of appraisal procedures and results to perpetrate age-based discrimination |
| Americans with Disabilities Act (ADA) | Prohibits employment discrimination based on disability | Limits appraisal criteria to essential job functions and requires reasonable accommodation as to how performance is appraised |
| Rehabilitation Act of 1973 | Similar to ADA; applies to federal contractors | Similar to above |

[(Malos, 2021)](https://www.legalmatch.com/law-library/article/performance-evaluation-discrimination.html)