

The following is one section of comment that appears in the Oregon Rental Housing Association Law Book — 2004 Edition. The book contains not just appropriate sections of law, but explanations of what it means, in simple English. It is available from all of the Rental Housing Association members of Oregon Rental Housing Association.

—DISPARATE IMPACT—

Proof of unlawful discrimination comes by showing either disparate treatment or disparate impact. Disparate treatment means you treat one individual differently than you do another: you say you have no apartments available to a family with children but you say you do have one to a family without children. Disparate impact is different. You might have a facially neutral policy—an occupancy standard, for instance, of one per bedroom—but the *effect*, the impact, of that policy is to exclude more persons in one protected class—families with children—than persons in general.

This concept of disparate impact is not new law; the concept was developed in federal case law in the early 1970s. But it was put into statute by the 2003 legislature as part of a package of changes dealing with domestic violence. Those changes came about in part because of the case of *Alvera v. Creekside Village*. In that case, a landlord had a facially neutral policy: evicting everyone who, individually or by guest, caused injury to another tenant; a zero-tolerance toward violence. So when Tiffani Alvera was assaulted by her husband, even though she had him arrested and got a restraining order against him, the landlord nonetheless evicted her. In an administrative hearing, HUD found that the policy of evicting everyone in a household—be they the perpetrator of the violence or the victim—had a disparate impact on women (sex is a protected class) because women are overwhelmingly the victims of domestic violence.

Before determining that the disparate impact is unlawful discrimination, a court or BOLI (the Bureau of Labor and Industries has enforcement power) *must* consider three factors: the significance of the adverse impact, the importance and necessity of the business purpose of the rule, and the availability of less discriminatory alternative rules. In the *Alvera* case, the landlord could have evicted only the perpetrator, a simple alternative.