



# **DUE PROCESS, DISCRIMINATION & DISPARATE TREATMENT: What defines it and How to seek compensation!**

Unfortunately, Unlawful Discrimination takes place every single day across various sectors of society; in work places, schools, government administration buildings, and in various commercial settings across the country and world every day. It is imperative that you understand your right to fair treatment, are able to recognize when it is violated, and aware of resources available to you.

## **What is Discrimination & Disparate Treatment?**



Illegal discrimination is defined in vague, general terms as *being treated differently than someone else "because of" a protected characteristic*. What does "because of" mean, you ask? In this context it means "motivated or inspired by." If the protected characteristic was a motivating factor in the incident showing disparate treatment, then the incident is usually a discriminatory practice. **Disparate Treatment** is a form of unlawful discrimination that loosely means **treating someone badly, detrimentally differently, or less favourably than others**, on the basis of certain "protected" personal attributes or characteristics. Disparate treatment refers to intentional discrimination, where people in a protected class are deliberately treated differently. This is the most common type of discrimination. An example would be **an employer giving a certain test to all of the women who apply for a job but to none of the men**.

The protected characteristics are:

1. sex / gender



2. marital status
3. pregnancy and maternity
4. race, nationality or ethnic / national origins (includes skin colour)
5. religion or belief
6. disability
7. age
8. sexual orientation
9. gender reassignment

It is against the law to treat someone less favourably than others, on any of the above grounds. This includes how they are treated in the workplace, at school, in stores or any place or process open to the public.

## **Discrimination Laws**



The **U.S. Constitution**: The Fifth and Fourteenth Amendments of the United States Constitution limit the power of the federal and state governments to discriminate. The Fifth Amendment has an explicit requirement that the Federal Government not deprive individuals of "life, liberty, or property," without due process of the law and an implicit guarantee that each person receives equal protection of the laws. The Fourteenth Amendment explicitly prohibits states from violating an individual's rights of due process and equal protection. Equal protection limits the State and Federal governments' power to discriminate in their employment practices by treating employees, former employees, or job applicants unequally because of membership in a group, like a race, religion or sex. Due process protection requires that employees have a fair procedural process before they are terminated if the termination is related to a "liberty," like the right to free speech, or a property interest.

The **Civil Rights Act of 1964**, a landmark civil rights and labor law in the United States, outlaws and prohibits discrimination based on race, color, religion, sex, national origin, and



now sexual orientation and gender identity. The Act prohibits unequal application of voter registration requirements, racial segregation in schools and public accommodations, and employment discrimination. The act remains one of the most significant legislative achievements in American history.

**"Section 1983"**, authorized monetary and injunctive relief against anyone who, acting under the authority of state law, deprived a person of their constitutional rights. Section 1983 is the most prominent and commonly-litigated civil rights statute.

**42 U.S.C. § 1983** now reads:

*"Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."*

Section 1983 made relief—in the form of *monetary damages*—available to those whose constitutional rights *had been violated* by a person acting under State authority. For instance, if a person's right to due process was violated by a prison guard or police officer



who was said to be acting under the authority of the state, under § 1983, that person could bring suit for monetary damages against the prison guard. Without § 1983, that person would have to seek an injunction by the courts for the due process violation. Section 1983 of the 1871 Civil Rights Act provides a way individuals can sue to redress when their federally protected rights are violated, like the First Amendment rights and the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Section 1983 can be used to redress violated rights based on the federal Constitution and federal statutes, such as the prohibition of public sector employment discrimination based on race, color, national origin, sex, and religion.

The **Fair Housing Act of 1968**, which was meant as a follow-up to the Civil Rights Act of 1964, expanded on previous acts and prohibited discrimination concerning the sale, rental, and financing of housing based on race, religion, national origin, and since 1974, sex. Since 1988, the act has protected people with disabilities and families with children. Pregnant



women are also protected from illegal discrimination because they have been given familial status with their unborn child being the other family member. Victims of discrimination may use both the 1968 act and the 1866 act's section 1983 to seek redress. The 1968 act provides for federal solutions while the 1866 act provides for private solutions (i.e., civil suits). The act also made it a federal crime to "by force or by threat of force, injure, intimidate, or interfere with anyone... by reason of their race, color, religion, or national origin, handicap or familial status."

## **DUE PROCESS: YOUR LEGAL RIGHT**

Due process is a **requirement that legal matters be resolved according to established rules and principles**, and that individuals be treated fairly by receiving the same treatment and administration of public processes. Due process applies to both civil



and criminal matters. Due process under the Fifth and Fourteenth Amendments can be broken down into two categories: procedural due process and substantive due process.

Procedural due process is based on principles of fundamental fairness and addresses which legal procedures are required to be followed in state and federal proceedings. Substantive due process is the notion that due process not only protects legal procedures and processes, but also protects certain rights unrelated to procedure. Substantive due process has been interpreted to include things such as the right to have a law or procedure affect you in substantially the same way as it does other citizens the majority classes, as well as the right to work an ordinary kind of job, marry, and to raise one's children as a parent. If a law or process unfairly burdens a particular person or class of people, it is unconstitutional.

What is a due process violation? A due process violation occurs whenever a person or entity suffers from the government failing to follow or apply its own laws and procedures. The



Fifth and Fourteenth Amendments of the United States Constitution limit the power of the federal and state governments to discriminate and obligates them to provide equal protections and enforcements under the law.

## DO YOU FEEL VIOLATED???

Discrimination can be proven by any evidence that shows that you were unfairly treated because of your race, sex, religion, nationality, or other protected characteristics. For example, if you were repeatedly denied a promotion while your counterparts with identical or substantially similar qualifications received the promotion, and the only real difference between you is race or religion for instance, then that documented fact of promotion records could serve as evidence of employment discrimination. Or, if the documented or statutory process is to issue a fine and citation for a civil offense, and you were arrested and jailed without notice or a hearing, that would qualify as a violation of your due process and



other discrimination laws. These kinds of violations happen every day and go unaddressed to the detriment of society and the quality of life of its members.

If you believe your rights have been violated via some form of discrimination, chances are you're correct! Contact **The J.R. Beason Firm PLLC. immediately as STATUTE OF LIMITATIONS can and do limit your opportunities to SEEK JUSTICE!**

Attorney John R. Beason III  
Managing Attorney;  
The J.R. Beason Firm PLLC.  
[JRBeasonConsulting@gmail.com](mailto:JRBeasonConsulting@gmail.com)  
[JohnBeasoniii@gmail.com](mailto:JohnBeasoniii@gmail.com)  
(269) 213-1426  
D.C. Bar No.: 1721583  
International Bar Assoc. No.: 1522438