

11/10/17

In 2006 - for political reasons, the Affirmative Action and Equal Opportunity Departments merged to create The Dept. of Civil Rights. It appears by the merging of these departments, it was not handled in the best manner and many structural and process errors were made along the way creating this Department.

In order to create this new Department per a new ordinance, the two existing Department heads needed to be downgraded; One to a Division Head the other to a Division Manager, thus leaving room to create the New Department Director of Civil Rights (DCR).

As an effort to review and rectify this long-standing error, my current position study was turned in for review to HR by the DCR Director on **Friday August 18th, 2017** then to the current HR Director (Brad Wirtz). It was then routed to the HR Services Manager (Mike Lipski), then assigned to the DCR Analyst (Susan Gafner) for review on 8/31/17.

HR Rule: Classification Study/Survey: The Human Resources Director or designee may initiate a study or survey of an existing classification or a group of classifications to determine whether said classifications are assigned to the appropriate salary range in the Compensation Plan. The study may include an analysis of positions in the classification(s), comparison of existing levels of essential duties and responsibilities, internal comparison of wages, external wage surveys, or other means necessary to determine appropriate placement within the Compensation Plan.

Note: Upon request of the DCR Director (Norman Davis), It was suggested that I work directly with our HR Analyst on this review and request to ensure all the HR required documentation was in order. So, this is what I did.

The HR Analyst did not disagree with my initial request for an 18/21 Comp/Class range per the documentation supplied with my review packet. Please note this packet was also pre-approved by the DCR Director (Norman Davis). It was also learned the HR Analyst supervisor disregarded all the materials submitted in the packet and mentioned to the HR Analyst conducting the review, there was no way he could have done this. If I did not do the things I presented, then the HR services Manager is calling the DCR Director and myself a liar – or at least accusing us of submitting false or inaccurate information.

Back and forth for a few months the HR Analyst and the HR Services Manager disagreed on the review language/content, structure and process. Upon this, the HR Analyst presented what was deemed a logical and pleasing compromise to the HR services Manager by recommending a class/comp group 18/15 for the misclassification and an 18/17 for a reclassification.

This was not agreed upon for weeks by the HR Services Manager, forcing a drafting, redrafting to the HR services manager drafting portions of the documents himself adding footnotes to support his position. When I received my review, I question the foot note attached as to relevance? Are foot notes a common practice with reviews? This behavior felt and appeared to be a direct targeted action by the HR Services Manager.

On 11/2/17, I received the results of my review from the HR Analyst and later that day by email, I asked some specific questions of the HR Services Manager as to how he came up with his analysis? After all, he added his edits, downgraded my position to be lower than his own and told the HR Analyst specifically what he wanted in my review.

After receiving my email outlining my disagreement and requesting answers to the process/methodology used in this decision, the HR Services Manager never really answered any of my specific questions but rather, passed along any responsibility of this decision, other than his approving of this decision, which he identifies as being written by the HR Analyst – which leads me to now have a truthfulness and credibility issue.

From: Bishop, Byron

Sent: Thursday, November 02, 2017 3:07 PM

To: Lipski, Michael <MLipski@cityofmadison.com>

Subject: Position Study Review for EOC Division Head

I am in full disagreement with my Mis-classification/Re-Classification review. I do not support nor agree with these findings.

By Ordinance ALONE, my position as DIVISION HEAD, is classified higher than the HR Services Manager. Mike please site in your own words, the Ordinance or HR Rules as to why you supported this decision and to what method you use to come this understanding?

Equal Opportunity Division Head. There is hereby created a Division of Equal Opportunities that shall be managed and directed by a Division Head. The Equal Opportunities Division Head shall report to, be supervised by and perform the duties of his/ her office under the control of the Director of the Department of Civil Rights and shall be responsible for the implementation of Sec. 39.03, MGO, the Madison Equal Opportunities Ordinance. The Director of the Department of Civil Rights may designate the Equal Opportunities Division Head as an ex officio non-voting member of the Madison Equal Opportunities Commission. The Division Head shall have a background demonstrative of a commitment to the policies set forth in Sec. 39.03, MGO, the Madison Equal Opportunities Ordinance. In performing his/ her duties the Division Head may delegate his/ her authority to a subordinate employee within the division.

BYRON BISHOP'S – HR MISCLASSIFICATION/RECLASSIFICATION APPEAL

From: Lipski, Michael
Sent: Thursday, November 02, 2017 3:47 PM
To: Bishop, Byron <BBishop@cityofmadison.com>
Cc: Donahue, Harper <HDonahue@cityofmadison.com>; Gafner, Susan <SGafner@cityofmadison.com>
Subject: RE: Position Study Review for EOC Division Head

Hi Byron

Thanks for sharing your concerns. To answer your question about the ordinance, **I was not with the City when the agencies merged in 2006 to create the Department of Civil Rights.** What I can tell you from the historical documents I do have, when your job and the AA Manager job was created at that time, the ordinance and resolution that went to Personnel Board referred to creation of the Equal Opportunities Manager and Affirmative Action Manager classifications and this is how the salary schedules and payroll systems have referred to the positions ever since. I am attaching the Personnel Board memo which recommended creation of the classifications as well as the agenda where they were considered, by ordinance (see item 13). I am also attaching a copy of your class specification that was signed in 2006 by the Interim HR Director which refers to the classification title as Equal Opportunities Manager. Because I was not here, **I can't explain why the language in Chapter 39 is not consistent with what was passed by the Personnel Board and Common Council in 2006 regarding your classification title.**

Regarding the decision, you have the **memo from Susan that I approved** regarding the reasoning behind the recommendation. I hope this helps!

Mike

On this date 11/2/17. I formally appealed my review decision to the HR Interim Director (Harper Donahue). Stating (In short), why I felt this was done in error.

From: Bishop, Byron
Sent: Thursday, November 02, 2017 2:24 PM
To: Davis, Norman <NDavis@cityofmadison.com>; Jones, Felicia <FJones@cityofmadison.com>
Cc: Donahue, Harper <HDonahue@cityofmadison.com>
Subject: EO Mgr. and AA Mgr. 10-2017.docx

I am in full disagreement with this review. I do not support nor agree with these findings. It appears that HR has in one area gone way outside the scope of its role by making this process personal and within another area, (done what it has always

done), by providing the typical two step reclass rubber stamp without thoroughly conducting a proper position study or review. I question the foot note on my review as to relevance. I also want to know how many other reviews in the last 2-4 years have a foot note attached?

There appears to be an established historical pattern and practice that has been going on for years, making this City of Madison HR process non-objective and completely bias. By Ordinance ALONE, my position as DIVISION HEAD, is classified higher than the HR services manager who is solely responsible for making this Mis-Classification/Re-Classification decision. This decision has been pushed back three times without any real explanation why? The entire process needs to be reviewed to ensure we are making correct decision involving (Mis-classifications, re-classifications and promotions) for Women and People of Color are (right) by our employees, free from discrimination or bias.

I am formally appealing this review and requesting a meeting with the following: Norm Davis, Felicia Jones, Harper Donahue

On this date of 11/7/17, I, Norm Davis and Felicia Jones met with HR Interim Director (Harper Donahue) to discuss our combined appeal. **Note:** Norman Davis approved and submitted our misclassification/reclassification documentation together at the same time to HR for review.

In this meeting (Harper Donahue) stated this was a bit unusual process doing it this way and that may email was loaded with items to address. Now to this point, what we have been arguing about HR is their process or lack thereof. To this point I have dealt with the HR Analyst, The HR Services Manager and now the HR Interim Direct and each one has identified a different understanding of the misclassification/reclassification process while showing conflicting rules against the ordinance. Either these three individuals are all correct or all incorrect, either way, this is a real problem for the city.

As we sat in the beginning of this appeal meeting, (In the HR Interim Directors Office), we all assumed since this was an HR process, I expected to see an outline or an explanation as to what we can expect during our meeting time. An outline or agenda was not presented, however we discussed what Harper believed to be the learned process for appeals and he shared that with us.

Harper presented to us a section of the ordinance 3.54 (9) that governs those in comp group 21 and their titles. This document was presented as the only means negating our class/comp argument and was being used to justifying his class/comp 18/15 position. The document he presented, clearly states it is only listing of *certain* (Not all) managerial classifications at that level. Which in my opinion does not make the case alone for HR to decide against my class/comp review and the merits of my argument.

Document Presented By: Harper Donahue
at Appeal Meeting 11/7/17

Sec. 3.54(9)

OFFICIALS, BOARDS, EMPLOYEES
AND PUBLIC RECORDS

Certain
But
Not All?

(9) Compensation of Managerial Employees.

(a) Creation. Effective January 1, 1985, there is created a plan for the annual evaluation and adjustment of compensation of certain managerial employees. Except as provided otherwise in these ordinances, the provisions of Sections 3.53, 3.32, and 3.54 shall apply to such employees.

(b) Positions. This subsection shall apply to the following positions:

- | | |
|--|--|
| Building Inspection Division Director | Fire Chief |
| City Assessor | Fleet Service Superintendent |
| City Attorney | Human Resources Director |
| City Clerk | Information Technology Director |
| City Engineer | Library Director |
| City Traffic Engineer & Parking Manager | Monona Terrace Director |
| City Treasurer | Parks Superintendent |
| Civil Rights, Director of Department of
Community Development Authority
Executive Director | Planning & Community & Economic
Development, Director of
Department of Planning
Division Director |
| Community Development Division,
Director | Police Chief |
| Economic Development Division,
Director | Public Works Director |
| Finance Director | Street Superintendent |
| | Transit General Manager |
| | Water Utility General Manager |

(Am. by Ord. 11,835, 4-24-97; Ord. 12,328, 2-26-99; Ord. 13, 379, 8-2-03; ORD-06-00097, 8-2-06; ORD-06-00176, 12-8-06; Renam. by ORD-07-00048, 4-12-07; Am. by ORD-07-00074, 6-26-07; CHA-06-00005, 6-3-06--Non-Charter Provision; ORD-08-00109, 10-7-08; ORD-10-00050, 5-12-10; ORD-10-00069, 7-27-10; Am. by ORD-11-00037, 3-8-11; ORD-12-00041, 4-19-12; ORD-13-00004, 1-15-13)

(c) Implementation.

1. The evaluation of each managerial employee shall be based on objective criteria which may include but not be limited to critical incident reports and performance in relation to predetermined objectives and measurement standards. The criteria shall be established and may be revised from time to time by the Mayor as administrative procedural memoranda.
2. Evaluations shall be made in the following sequence:
 - a. Employees below the level of Division Head shall be evaluated by Division Heads with review by Department Heads.
 - b. Division Heads and Assistant Department Heads shall be evaluated by Department Heads.
 - c. Department Heads operating under a statutory governing board or commission shall be evaluated by such board or commission.
 - d. Other Department Heads shall be evaluated by the Mayor who shall also review all other evaluations.

All evaluations shall be written and reviewed with each employee. Employees rated by supervisors other than the Mayor may make a personal and written appeal of their evaluation to the Mayor within three (3) working days after notification of rating. The Mayor shall consider input from the alderpersons and other sources concerning the evaluation of any affected employee.

Define

BYRON BISHOP'S – HR MISCLASSIFICATION/RECLASSIFICATION APPEAL

Compensation for Compensation Group 21 (2017–Effective July 2, 2017)

CG/Range	Position Title	Minimum	Maximum
21/15	City Clerk City Treasurer	\$83,771	\$113,091
21/16	(no positions)	\$87,800	\$118,530
21/17	City Assessor Fleet Service Superintendent	\$91,837	\$123,980
21/18	Civil Rights Director CDA Executive Director Community Development Div Dir Economic Development Div Dir Building Inspection Div Dir Streets Superintendent	\$96,252	\$129,939
21/19	Planning Division Director	\$100,863	\$136,165
21/20	Monona Terrace Director Transit General Manager Library Director Parks Superintendent	\$105,809	\$142,845
21/21	Information Technology Director City Engineer City Traffic Engineer & Parking Mgr Water Utility General Manager	\$110,755	\$149,516
21/22	Human Resources Director	\$115,665	\$156,148
21/23	City Attorney Finance Director Dir of Planning & Comm & Econ Dev Fire Chief Police Chief Public Works Director (currently premium for Fleet Superintendent)	\$120,975	\$163,317

According to the Ordinance 3.54(9)c2b, a Div. Head is congruent to an Asst. Dept. Head. How does this compare to a City General Manager or Division Director?

As per the HR appeal rules, during the appeal meeting, I started to present my specific reasons with specific questions as to Harper why I felt this review was not handled appropriately or in error. Initially, Harper refused to hear my position, but then commented I'm amused by this, let me get some water. After a few questions, I was cut off and not allowed to continue to present my reasons why I was appealing this. Norman felt we should use this time to have Harper identify the specific appeal process.

Note: According to the HR rules I did what was required.

Position Study Outcomes: Position studies may result in a change in classification title, compensation group and/or salary range, or no change at all.

i. *Approval:* Where the Human Resources Department has determined that reclassification or reallocation is appropriate, or a position's classification title should be changed, the Human Resources Director or designee shall submit a report outlining the reasons why a change is necessary to the Board for approval, and a copy of the report will be sent to the supervisor and employee affected by the change. The Board may approve or deny the recommendation. If the Board approves the recommendation, it will be forwarded to the Common Council for final approval. If the Board denies the recommendation, it may be returned to the Human Resources Department for further study or may be forwarded to the Common Council for a final determination.

ii. *Denial:* Where the Human Resources Department has determined that reclassification or reallocation is not appropriate, the Human Resources Director or designee shall notify the requesting supervisor and incumbent of the reasons for the denial in writing.

iii. *Request for Review:* Employees shall have the right to request review of the decision to either reclassify a position or deny it as the result of a study request. When deciding whether to request review of a decision, it is important to note that once the Board has taken action on a request to reclassify a position, an employee may no longer file a request to review the decision. Employees should inform the Human Resources Director of the intent to file a request for review as soon as possible in order to prevent Board action from occurring until after the review has been appropriately considered.

Initially, employees may request, in writing within ten (10) business days from the date of the final report from Human Resources, that the Human Resources Director review the decision. **The employee request should include the reason(s) why the employee thinks the determination was PERSONNEL RULES CITY OF MADISON**

REV. 2015 14

made in error. The Human Resources Director will then have ten (10) business days from the date the request was received to respond to the employee in writing. The Human Resources Director shall indicate whether the initial decision is

upheld, overturned, or sent back for further study. The Human Resources Director may choose to include a report justifying the decision or may rely on the reasons previously given to the employee.

If the employee is challenging Human Resources denial of a possible reclassification/reallocation, and is not satisfied with the response from the Human Resources Director, the employee will have the right to appear before the Board. At that time, the Board may choose to uphold the Human Resources Director's decision or may send the matter back for further study, with instructions as to what needs to be looked at further. If the Board upholds the Human Resources Director's decision, the employee has no further right to review.

If the employee is challenging a position reclassification/ reallocation, and the employee is not satisfied with the response from the Human Resources Director, the employee may appear before the Board, Board of Estimates, and/or the Common Council as appropriate.

After about an hour, Felica left the meeting. We continued to nail down an understanding about my appeal and the lack of procedure/process. Harper then stated, "I know your job and what is it, it's not more than a 15".

Note: during this meeting, Harper mentioned on two occasions, that he had **NOT** read (prior to our meeting), any of my misclass/reclass materials in the folder which he did have in his possession during the meeting. I then accused Harper of making a judgment, without any knowledge or information and having his mind premade prior to coming to this appeal meeting. Once again, this exact behavior proves my argument and all our positions. After a brief short discussion, Harper requested that he speak to Norman alone. I then left HR.

What is Now the Specific Problem to Address?

- There is no real Position/Title study with an outlined/detailed process/procedures
- Many of the Former (2006) EOC Department Head now EOC Division Head (Position Description) duties and responsibilities remained the same and have not evolved with the job in the last 11 years.
- The number of staff supervised from 2006 has increased
- The work and responsibilities has increased with higher levels of ability needed to execute what was accomplished (Within the short period of time it was accomplished)
- The Ordinance and the HR Rules govern what we can do as a city HR Department, neither one identifies the process/procedures as to how to go about doing what we are allowed.
- Ord. 39.01 (3), (4) identifies the two titles for DCR Department Head and DCR Department Manager. This language is very vague, and the wording is exactly the same for both titles. Only the title names show separation? What is this separation for? Is it here for a reason? Since the Ordinance is the law, I must assume the law is correct.

- The problem is - there are no real areas we can equate what the definition of a Division Head is comparable to. Because of this, I think we can define it as we see fit.

My primary complaint is this: My Position is a Misclassified Position.

- Many of the roles were assumed under an old general PD.
- I listed in blue, on the revised PD, a more articulated descriptive or definitive description of the appropriate NEW Department approved title change to **Chief Development Officer**. All which were omitted, (not by the HR Analyst) in the determination.

Understand a reclassification process assumes the position was classed appropriately prior to the reclassification review. That is why the misclassification is the only proper means for this review, then followed by a reclassification.

1. I am alleging that the City of Madison HR, has no standardized policy/process/procedures governing the misclassification, reclassification or promotional process other than the completely subjective one being used now.
2. I am alleging that the City of Madison HR, has only one (subjective person), that makes most, if not all, of the decisions for misclassification, reclassification and promotions.
3. I am alleging that the City of Madison HR, is inconsistent in its decisions of misclassifications, reclassifications and promotions; because of the lack of policy, procedure, practices and established patterns that are historically not consistent, as well as, the lack of having consistent procedures causes rules and practices to be applied unevenly. In addition, there are conflicting: Ordinances, Inter-Department Memos and HR Rules where all three do not match - as it related to my position and/or title.
4. I am alleging that the City of Madison HR Service Manager, is using the authority that should be owned by the Personnel Board as a controlled subjective process for misclassification, reclassification and promotions. I am also alleging that the City of Madison HR service Manger has misused this control abusively as a tool to manipulate the Classification/Comp level in comparison to his own level as a means to depress Women and People of Color in the misclassification, reclassification and promotional process.
 - a. **Note:** For the record, on its face, a Division Head appears to be a higher class/comp than an HR Services Manager. An 18/17 is the level of the HR Services Manager who has been making all of the class/comp/misclass/reclass decisions for the city within the last 5-7 years.

5. I am alleging that the City of Madison HR cannot be the content experts on any misclassification, reclassification or promotional process/procedure – because they can-not produce one. **HR does not conduct a regionwide/statewide or national wide position studies as a legitimate means for competitive comparison analysis of the duties and responsibilities identified within a new/revised position description and/or a classification change worksheet.** If such a study is conducted, it must be done by the employee, which makes the employee now the content expert.
- a. Because HR did not do the work or the research for the study, **how can HR disprove any of the content submitted by the employee** for a misclassification, reclassification or promotion as being inaccurate or not credible.
 - b. How can HR review/critique a process they never owned or researched in the first place?
 - c. Credibility now must fall towards those who offer the proof by doing the research, drafting and submitted the paperwork.
 - d. Even more challenging, how can HR disprove and disregard a process where the HR Analyst was involved in? (In my opinion, getting guidance from the HR Analyst is very appropriate and well within the scope of their role)

Here is an example. By the research I conducted and supplied, this role has been under classified and not in line with current trends of congruent responsibilities, (by level), for the last 11 years. Recent research for a "**Division General Manager**" via Payscale, <http://www.payscale.com> (March 2017), indicated the average salary with a degree is \$97,631 to \$111,747. **This would be a class/comp group 21/18 within the City of Madison.**

Here is another inconsistency, since the City of Madison requires a degree for my role or a comparable level of experince – then why aren't job offers for my within the same compensated margin of the national average?

It appears this process is not a fair one, decisions are not evenly applied, it is not equitable, there are many inconnstentcies, lacking structure/documentated procedures and appears to be completely subjective, this is why I am appealing this decision and I am asking for a 100% complete investigative review by the HR Director (Unless involved in the investigative review), the Personnel Board the City Attorneys office, the Mayors office or if necessarry the Federal EEOC for my misclassification and reclassification.

Specific appeal questions to be answered by the HR Director:

1. Within the City of Madison – to your best knowledge, in the last 5-7 years how well have we met our diversity goals for Women and persons of color at comp group 21 - Dept. Heads?

- a. In the past 5-7 years, who has brought forth Manager and Div/Dept. Heads promotional/re-classification names?
 - b. How many of those names were qualified women/people of color?
 - c. How many people of color or women have received those promotional opportunities?
 - d. Who was responsible in the Department and in HR for approving the class & comp ranges for those individuals?
 - e. What is the formal process/procedure that HR uses to determine all class & comp levels?
 - f. Who is the keeper/owner of such process/procedure?
 - g. How often does the HR Services Manager write misclassification or re-classification reviews that are being conducted by an HR Analyst? Who?
2. What strategies has HR applied in the last 5-7 years to rectify this problem of the misclassification/reclassification process/procedure is a fair one, where decisions are evenly applied, it is equitable, removing conflict of interest or inconsistencies, creating structure by documenting processes/procedures to ensure the city HR is being objective?
 3. Whose responsibility would it be to review/create such strategies?
 4. What is HR's current process and policy on conducting employee reviews?
 5. Byron Bishop - What is his title?
 6. Is his title a functional title or title identified by Ordinance?
 7. Are you aware of how DCR was created in 2006?
 - a. Please share what you know?
 - b. How were the positions for in DCR that are currently held by Mr. Bishop and Ms. Jones Created?
 - c. In your opinion do you believe these positions were appropriately classed when the department was created?
 - d. In your opinion, how or what should have been done?
 8. As a result of the original misclassification going back to 2006, do you understand that (I) Mr. Bishop, am contesting my current class and comp levels to HR?
 - a. **Note:** I am stating my position here - not only the need to be re-classified, but first - appropriately classified to the correct level (Based upon the title identified by the Ordinance).
 9. In HR, whose eye of responsibility is it to ensure employees are working at an appropriate competitive class/comp level for the city?
 - a. How has this been determined within the last 5-7 years?
 10. By his own written admission, Mike Lipski identified that he knew of the formation of DCR going back to 2006. He supplied me information as to an old memo and the approvals of the creation of the department. **Here are my questions:**
 - a. If he knew of the past and it is his responsibility to set and review all appropriate levels of classifications and compensation for city employees, why then within Mike's time as HR Services Manager did he never bring this issue up for review or discussion?
 - b. Why did he not fix this issue when recruiting for these roles or (a few years ago), when a re-classification was brought to his attention, (back then by the

AA Division Manager - Norman Davis). Norm has not had a reply from HR yet today – currently, Norman Davis is now the Dept. Director for DCR?

- c. Additionally, when Mike was faced with an opportunity to fix and rectify a class/comp problem stemming back to 2006, which again he was aware of, why did he not take this opportunity to fix it when presented with my misclass/reclass review?
 - i. Instead he fought with the HR Analyst on multiple levels, refusing the review decision/recommendations by his HR Analyst, changing my ordinance title from Division Head to unit manager, foregoing all of the submitted/supporting documentation for my review and finally telling the Analyst to draft the review decision in a way that was satisfying to him.
11. HR Analyst shared with DCR in a management team meeting, how the review decision was a force by Mr. Lipski and not the words of nor reflects the opinion of the HR Analyst. **Ironicaly, Mr. Lipski indicated it was he that approved the review that was written by the HR Analyst.**
 - a. How often does Mr. Lipski challenge the reviews by his Analyst? Who?
 - b. Whose reviews have been challenged to the same capacity that ours in DCR have?
12. In your opinion, is it the Ordinances of the City, (that affect HR), that must agree with HR's documentation and paperwork or is it that HR's documentation and paperwork must meet, agree and match the Law which is our Ordinance?

With these questions I have asked you today, I believe a foundation of bias has been established for (Hiring policies, procedures, patterns and practices regarding misclassification/reclassification and promotions for women and people of color). Can you tell me how HR would argue against this - now as this is identified as an HR bias?

Despite a few recent acceptations, there is direct supportable historical statistical evidence where the City of Madison hardly ever placed a female or person of color into top/key management positions/classification, despite their availability and talent.

Note: If at any stage where an individual is rejected due to an inappropriate selection method, the method is unlawful, even if the process compensates for the inappropriate selection step by ensuring that a proportionate percentage of the group is ultimately selected.

Evidence might further show, how the City of Madison's Human Resources explanation of despaired treatment, varied pattern and practices, and the inconsistency of its processes is weak or lacks credibility - therefore this could enable a court to rule that the true reason for its actions might be discrimination.

This type of adverse impact matter occurs when employers do not necessarily intend to exclude people of a particular race, color, national origin, gender or religion, but they engage in practices that have the effect of doing so. This form of discrimination is known as disparate – or adverse – impact. In some situations, the “Four-Fifths Rule” is a

rule of thumb adopted by agencies to determine if a group/class/individual has a substantially different rate of selection for top/key management positions/classification than others.

The first step in a disparate impact situation is to assess whether a particular employment practice/pattern disproportionately excludes members of a protected group. This will typically be done with statistics that compare the rate at which protected group members are excluded by the employer's practice, as compared to the rate at which non-group members are excluded.

The Rule is not a legal definition, but a method that can be used by employers to begin to evaluate if their selection procedures have adverse impact. The Four-Fifths Rule is used to compare the selection rate of particular minority group applicants against that of the group with the highest rate of selection. If such a comparison shows that the percentage of persons selected from the minority applicants is less than four-fifths of the percentage of majority group applicants selected, this can be evidence that the selection process has an adverse impact on the minority group.

For example, if the employer hired 50% of white applicants, but only 30% of black applicants, the interpretation under the Guidelines is that the selection process may have an adverse impact upon blacks because the selection rate for blacks is only 60% of the selection rate for whites ($30/50 = .6$ or 60%).

Example case law: Ricci v. DeStefano, 557 U.S. 557 (2009) is a US labor law case of the United States Supreme Court on unlawful discrimination through disparate impact under the Civil Rights Act of 1964.

Remedy: I am seeking the correction of all inappropriate actions that were conducted against me to be satisfied where I can be made whole.

- a) An Appology
- b) Set my position to the correct level from the misclassification
 - a. Back pay the diffrence back to date of hire
- c) Reclass to the correct and appropriate level
 - a. Back pay the diffence to the date of submission to HR
- d) Create the new title change in the ordiance "Chief Development Officer" (not creating just a working title)
- e) Corrective and progressive disciplinary action for all HR employees that were negatively involved in my misclassification, reclassification.
 - a. Corrective and progressive disciplinary action for any other HR employee that subjectively made decisions against myself, women and people of color by blocking them (when qualified) from an appropriate reclassification level or a reclassification review.
- f) Any HR staff members directly involved in the negative and overt disregard for my review, (which has had an adverse impact on me personally and professionally), I would like staff involved to be dealt with

appropriately, where this action and inappropriate behaviors by managers and/or the abuse of their authority ceases.

- g) Training and education on Leadership, Program/Project Management, Total Quality Management.