

General Statement of the Law-Employment Cases

Discrimination (Disparate Treatment)

To prove a case of disparate treatment, a plaintiff must generally show that she was a member of a protected class. In this case example, the protected class would be a person's race, such as African American. A plaintiff must also then prove that she was treated differently because of her race and that similarly situated individuals outside of her protected class, such as Caucasians, were treated more favorably. A plaintiff also has to establish that she suffered damages as a result of the disparate treatment.

Retaliation

To prove a case of retaliation, a plaintiff needs to establish that she engaged in protected activity. Protected activity generally means lodging a complaint of discrimination, harassment or retaliation or participating in the investigation of such a complaint.

After establishing that she engaged in protected activity, the plaintiff needs to establish that she suffered an adverse employment action. An adverse employment action is defined broadly but generally includes conduct by the employer that a reasonable person believes would negatively affect their willingness to bring forward complaints. This includes verbal warnings from the employer, probation, demotion, and termination as a few examples.

The last element the plaintiff must establish is causation – a causal link between the protected activity and the adverse employment action. Generally, this is established by the temporal proximity between the protected activity and the adverse employment action - whether a day or months or longer. Certainly the longer the duration between the protected activity and the adverse employment action, the more difficult the causation argument. The converse then is true - the shorter the duration between the protected activity and the adverse employment action, the easier it is to prove causation.