

II.

Current employee claims

2. Failure to Promote Claims

Failure to promote claims require a separate type of analysis. In order to have a viable failure to promote claim, the employee must establish that he or she applied for the promotional opportunity. In addition, the employee must establish that he or she had qualifications superior to the individual hired into the position in question. It is not sufficient that the employee have equal qualifications. In most non-union situations, the employer creates the qualifications necessary for the promotional opportunity. In doing this, the employer can decide how much weight to attach to each qualification criteria. For instance, in some situations, length of service or experience will determine the best-qualified candidates. In other cases, length of service or experience may not be as vital as educational attainment or ability to work productively in a team setting. Employers may not pre-select candidates for promotional opportunity and then adjust qualifications to rig the process. Employers may not provide certain candidates with advantages not made available to other candidates without good cause or reason.

Once it is established that the employee actually applied for the position and possessed qualifications (arguably superior) to the individual who secured the position, the employee must still prove that the difference in treatment was the result of race, sex, age, national origin, religion, marital status, disability status, whistleblower status, or in retaliation for having pursued legal remedies in the past. Applicants for employment are protected by state and federal civil-rights laws. If an applicant in a protected group is denied employment because of his or her gender, race, national origin and the like, he or she may bring an action for what is known as injunctive relief (an order that the applicant be hired), or for money damages. As in the case of termination, the applicant may establish a case by either direct or indirect evidence..