

PITT, DOWTY, McGEHEE & MIRER, P.C.

IV.

Terminated Employee issues

Wrongful-Termination Civil-Rights Claim:

In pursuing a claim of wrongful termination in violation of state or federal civil-rights laws, the employee must prove that he or she was a member of a protected group (such as race or gender). The employee must also prove that the termination was because of the individual's protected status.

In order to have a successful case, the employee must either have direct or indirect evidence of discrimination. Direct evidence means that the employee heard or observed a decision maker engage in an overt discriminatory act. Direct evidence usually consists of statements made by a decision maker indicating that the decision maker was biased or prejudiced against the employee because of his or her protected status. It is not required that the employee actually overhear the decision maker make the comment in question. Reports from reliable sources can serve as a basis for establishing a case of discrimination based on direct evidence.

A second way a claim of discrimination can be established through is the use of indirect evidence. Under the law, once an employee establishes that he or she was a member of a protected group, was adversely treated by the employer, and that he or she was qualified for the job in question, the employer is required to articulate a non-discriminatory reason for the employment action. If the employer does present to the court its reason (i.e., the employee was a poor performer), the burden is on the employee to prove that the reasons given by the employer are false or, as known in law, pretextual. Even if the employee can demonstrate that the reasons given by the employer for the employment action were pretextual, the employee must be able to present sufficient evidence that the action taken by the employer was because of the employee's membership in a protected group.

Other forms of indirect evidence include pattern of discrimination (as where only females are selected for a layoff from a mixed group) statistical evidence (analysis of selection data to establish that overall the selection rates of a particular group could not have occurred by chance) and other evidence from which a discriminatory motive may be inferred.