

Discrimination in the Workplace:
Do you have a Case?

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Discrimination in the Workplace is only legally prohibited when that discrimination targets an employee who falls into a protected classification under the law. Title VII of the Civil Rights Act of 1964 and New Jersey's Law Against Discrimination statute specifically identifies those protected classifications.

In New Jersey, it is deemed to be an unlawful employment practice for an employee to discriminate based on an employee's race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, genetic information, sex or atypical hereditary cellular or blood trait of any individual, or because of the liability for service in the Armed Forces of the United States or the nationality of any individuals, or because of the refusal to submit to a genetic test or to make available the results of a genetic test to an employer.

An employee who is discriminated against by his employer but who cannot prove that he is being discriminated against because of one of the protected classifications as identified above, i.e., race; age; sex; etc., will have no right under the law to challenge the employer's discriminatory conduct. This means an employee may have suffered an obvious injustice but has no cause of action under the law. There are many wrongs without a remedy in employment cases.

Employees who are able to show that their employer's discriminatory conduct was motivated because of race, age or sex, for example, will establish a "*prima facie* case." A *prima facie* case consists of sufficient evidence to get the Plaintiff past a motion for dismissal and will require the Defendant to proceed with the case. A Plaintiff who establishes a *prima facie* case, of course, must still defeat the employer's evidence that will at the most attempt to show that discrimination was not a factor in the adverse employment action. The employee, therefore, is

required to prove that the employer's reason for the adverse employment action, such as a discharge or failure to promote, is phony.

Some of the successful ways to prove that the employer's reason is a lie are:

- Proof that the employer violated its own rulebook. Simply put, "they broke their own rules to fire me."
- Proof of a sudden drop in performance shortly before the dismissal. That is, "the employee's ability to do her job did not suddenly change; the employer set her up to fire her."
- Proof of a secret paper trail. This can be strong proof to a jury when they are told "the employer used secret information to set the employee up because they knew they couldn't fire him any other way."
- Proof that the employee is the best qualified for the job. If the employer refused to keep the person who was the best qualified for the job, it is easier to convince a jury that another factor was the real motive : discrimination.

An employee who alleges he or she was discriminated against on the basis of his or her race, gender, age, disability or some other protected status must have strong and solid facts in their favor to defeat the employer's proffered "non-discriminatory" reasons. Employment cases are often driven by the fact that the employer acted in bad faith. Nonetheless, jurors have little sympathy for a lousy employee or an employee who engaged in acts that justified his or her termination.

How do employment discrimination cases fare in the Courts? The national numbers show employees winning 60% of their cases on liability. Analysis of settlements involving discrimination overall show a median of \$35,000. Cases that successfully go to verdict have a mean of \$438,626.00. However, the verdict range is generally from \$344,000.00 - \$14,200,000. The cases that appear to render the highest median settlement amount are age discrimination claims. The median settlement amount for age discrimination claims is \$66,629.00.

If you believe you have been illegally discriminated against with respect to the terms and conditions of your employment, call us to discuss your matter. Your legal rights may have been violated and we can help provide a remedy.

Source, Jury Verdict Research's Employment Practice Liability Verdicts and Settlements. July, August, September, 2000.