

Employment Discrimination – Types of Cases

In a prima facie employment discrimination case, there are a minimum set of facts that the plaintiff must claim and be able to prove. There are a number of ways to make a basic prima facie employment discrimination case.

The first way is rare. If an employer has what's considered a “facial” policy of unlawful discrimination. In this example, an employer will state bluntly that it only hires a certain demographic. For instance, it might advertise that it only hires attractive waitresses. This policy is very rare, as most employers are very familiar with discrimination law.

The second way is through direct evidence, or a smoking gun. If the employer tells the application directly, “I can't hire you because of your ethnicity,” then a case can be established. It is rare, but this occurs more often than facial discrimination.

A third way is through circumstantial evidence. Most cases fall into this category, and these cases are often elaborate. The United States Supreme Court gave a list of five requirements for a case involving circumstantial evidence while judging an employment discrimination case for a plaintiff:

- The plaintiff has to be a member of a protected class.
- They have to apply for the job, and the job has to be open.
- They have to have the minimum qualifications for the job.
- They have to have not been hired for the job.
- The job then had to remain open, or a person of another race was hired for that job.

This is the basic model for circumstantial cases involving all types of employment discrimination, whether it be by sex, age, race, ethnicity, or disability. The Supreme Court thus made it very simple for a plaintiff to put out a prima facie case. However, this does not increase the likelihood of the case's success. It simply means that the employer must put out evidence that the plaintiff was fired or not hired for a legitimate non-discriminatory reason. The employer usually has evidence supporting a legitimate non-discriminatory reason, which makes winning cases based on circumstantial evidence potentially very difficult.

So, essentially, the basic prima facie case allows the plaintiff to shift the burden of proof to the employer. After the employer provides the non-discriminatory reasons for not hiring or firing, the plaintiff receives the burden of proof to demonstrate that the provided reasons are illegitimate and the employer was indeed discriminatory with other evidence.

Disparate treatment is a simple concept in employment discrimination cases. Employment discrimination cases can be classified as either disparate treatment or disparate impact cases. In a disparate treatment case, the plaintiff suggests that the employer treated the plaintiff differently than other workers who were in a similar circumstance. For instance, if two workers take a break at the same time, and one is fired while the other one is not for taking a break, and the reason for firing the worker was because of him being black, then it would be a disparate treatment case.

In a disparate treatment case, the burden of proof goes onto the lawyer after prima facie requirements are met. The burden of proof on the employer is to prove that they are not treating the plaintiff differently because of sex, race, disability or other demographic, but rather because of other

nondiscriminatory reasons.

In a disparate impact case, the plaintiff claims that the employer discriminates on a much greater level than on the individual level. For example, the plaintiff may claim that the employer overtly does not hire Latinos to work in any positions. The idea is that the discrimination affects not just one person but an entire race of people. Another example of a disparate impact case would be in the circumstance that an employer lists height, weight, race, or other requirements for a job application. Or if an employer subjects its interviewees to educational or IQ testing, they might be considered acting out of a discriminatory policy.

In order to prove a disparate impact case, the prime facie case must be established. The plaintiff has to prove that, through statistics, the employer's discriminatory practices have had an adverse impact on a protected group. The defendant is allowed to criticize the statistical analysis. If the plaintiff successfully establishes prima facie disparate impact, the burden of proof shifts to the employer, who must then prove that the practice in question is "job-related for the position in question and consistent with business necessity." This is also called the business necessity proof. In the case of a successful business necessity proof, the plaintiff may still win by proving that the employer has not adopted an alternative employment practice that would be consistent with business necessity and not have a disparate impact effect on a protected class.