

## Insights

### Recent 7th Circuit Court of Appeals Decision Changes Legal Standard for Employment Discrimination Cases

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There have been major changes in the legal standard courts must use when evaluating employment discrimination disputes. In August, the 7th Circuit Court of Appeals (which governs federal courts in Indiana) clarified the proper legal standard for analyzing employment discrimination cases at the summary judgment stage. For years the district courts and the 7th circuit have used the direct-and-indirect methods for deciding employment discrimination cases. These methods distinguish evidence as either direct, which includes admissions of culpability and smoking-gun evidence, or indirect, which includes suspicious circumstances that might allow an inference of discrimination. Courts have treated each method as having its own elements and the plaintiff must show evidence that "creates a convincing mosaic of discrimination".

In *Ortiz v. Werner Enterprises, Inc.*, the 7th Circuit held that courts should no longer attempt to characterize evidence as either "direct" or "indirect" and cannot rely on the "convincing mosaic of discrimination" metaphor as a legal standard. Instead, the Court held that the proper legal standard for evaluating employment discrimination cases is whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action.

Employment discrimination cases are usually complex, and rarely straightforward. The 7th Circuit opined that the direct and indirect framework does nothing to simplify the analysis, but instead complicates matters by forcing parties to consider the same evidence in multiple ways. The Court further found that use of separate methods and the search for elusive mosaics have complicated and sidetracked employment discrimination litigation for many years, and that all evidence is inferential and cannot be sorted into boxes. Finally, the Court directed courts to stop separating "direct" and "indirect" evidence as if they are subject to different legal standards; instead, all evidence should be considered together to understand the pattern it reveals.

The 7th Circuit accepts its share of responsibility in using the wrong standard and overturns all 7th Circuit decisions that rely on the "convincing mosaic of discrimination" metaphor or the direct-and-indirect framework. Going forward, any decision of a district court that treats the metaphor as a legal requirement or uses the direct-and-indirect framework in an employment discrimination case is subject to summary reversal, so that the district court can evaluate the evidence under the correct standard.



The new legal standard benefits the plaintiff's case because it simplifies the analysis for determining whether an employee can satisfy his or her burden of proof in order to withstand a request for summary judgment and proceed to trial on their claims. Evidence must be considered as a whole, rather than separated into different categories and asking whether any particular piece of evidence proves the case by itself. All relevant evidence must be considered and irrelevant evidence must be disregarded. This holistic view of evidence simplifies the analysis by treating all relevant evidence the same regardless if it can be labeled "direct" or "indirect".

### **Recommendations for Employers**

In order to be proactive and ensure defensibility of adverse employment actions, employers in the 7th Circuit should apply all disciplinary policies uniformly and perform thorough investigations before taking adverse employment actions. Employers should keep employees informed of company policies and possible disciplinary actions. Furthermore, it is important to maintain records and documentation for all adverse employment actions. Finally, when making employment decisions, employers should consider how the facts, as a whole, will be viewed by a court in the event of a claim by the employee.

For more information on this new legal standard and how it impacts employment discrimination disputes, or assistance with other employment law concerns, please contact a member of our Labor and Employment Practice Group.