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Job discrimination proof burden eased

Plaintiffs bringing employment discrimination claims will benefit from a playing field that has been tilted in their favor. In its recently concluded term, the Supreme Court decided a case that resolved an ongoing debate about the type of evidence necessary for a plaintiff to produce in a discrimination suit. The court ruled in *Reeves vs. Sanderson Plumbing Products Inc.* that a trend in some jurisdictions toward a high amount of evidence was not necessary.

The facts

Roger Reeves worked for Sanderson Plumbing Products for 40 years as a supervisor. He was responsible for recording the attendance and hours of those under his supervision, and reviewing a weekly report that listed the hours worked by each employee. His supervisor informed the director of manufacturing that production was down because employees were often absent and coming in late and leaving early. The company then fired Reeves and his supervisor, claiming that the plaintiff



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did not maintain accurate attendance records.

Reeves brought an age discrimination claim against his employer when he was fired. At trial, Reeves introduced evidence that he had accurately recorded the attendance and hours of the employees under his supervision, and additional evidence that the director of manufacturing had displayed age-based hostility in his dealings with Reeves. The trial court ruled for him, awarding monetary damages.

The Court of Appeals overturned the jury's verdict. Finally, the Supreme Court has reversed the Court of Appeals and Reeves will receive his damages.

Background

It is illegal for an employer to discriminate against an individual for various reasons protected by law — for example, race, sex, religion, marital status, age or disability. In order to hold the employer liable for the discrimination, the plaintiff must show that the employer was actually motivated to discriminate because of a protected trait (race, sex, etc.). But there is rarely direct evidence of employment discrimination, such as a document stating that a certain employee should be fired because they are too old, or for an employer to state in the presence of witnesses, that a woman should not be hired because of her gender, etc. Therefore, the judge or jury in an employment discrimination case must infer an intent to discriminate in order to find the employer guilty.

The courts have established a framework of presenting evidence in employment discrimination cases. The judge or jury may infer an intent to discriminate if the plaintiff can establish what is called a prima facie case. Plaintiffs can establish a prima facie case by presenting proof that:

- They are a member of a protected class (for example, all people older than 40 are part of the protected class identified in the Age Discrimination in Employment Act).
- They are qualified for the position.
- They suffered an adverse employment decision (for example, termination, demotion).
- There are circumstances giving rise to an inference of discrimination (for example,

the position or job was filled by someone younger than 40).

Throughout the entire process, the plaintiff has the burden of persuading the judge or jury that discrimination is the reason there was an adverse employment decision or an adverse employment condition.

Once a plaintiff establishes a prima facie case in which the judge or jury may infer an intent to discriminate, the burden then shifts to the employer to produce a legitimate nondiscriminatory reason for the actions in question. If the employer can produce this evidence, they have produced sufficient proof to dispute the initial inference of intentional discrimination.

But, if the plaintiff can prove that the employer's stated nondiscriminatory reasons for adversely affecting the employee's job are only pretext for the real, discriminatory reason, then the plaintiff has again established an inference of discrimination. If this inference is strong enough, then the court will hold that the plaintiff has proven the employer's decision was motivated by intentional discrimination. The question has been the type and amount of evidence necessary to infer pretext. But the debate has now ended with the decision in *Reeves*.

The decision

Previously, courts were split on what type and amount of evidence is necessary to show pretext. Some courts held that the plaintiff must show that the defendant's reasons were false and that the motivation was actually discriminatory, a concept commonly referred to as "pretext plus." Other courts held that proving the defendant's reasons were false was enough and that furnishing direct evidence of discriminatory motivation on the part of the employer was not necessary.

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In the case of *Reeves*, the court rejected pretext plus and held that a plaintiff's prima facie case of discrimination, combined with sufficient evidence for a reasonable fact finder to reject the employer's nondiscriminatory explanation for its decision, may permit the trier of fact to conclude that the employer unlawfully discriminated. The court reasoned that, in some circumstances, proving the falsity of the employer's reason may be enough evidence to infer the employer is trying to cover up a discriminatory motive. That is, if the plaintiff has put on a prima facie case of discrimination, then goes on to prove the defendant's reasons are false, then the only explanation left is the one established at the prima facie stage.

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