

Can Employment Discrimination Plaintiffs Survive Summary Judgment?

Labor & Employment Law Update

By Julie Proscia on July 29, 2015

The Seventh Circuit recently affirmed summary judgment for the employer in *Miller v. St. Joseph County*, a race discrimination case, and in doing so applied what may prove to be a streamlined standard for determining whether employment discrimination plaintiffs can survive summary judgment.

The plaintiff in *Miller* was a long-time employee of the county's police department who sought several promotions which he did not receive. He alleged, among other things, that the promotion denials, a temporary assignment he disliked (but which did not change his compensation, benefits or rank), and the fact that he did not receive certain other promotions for which he apparently did not even apply, were all the result of race discrimination.

The court, while noting that it could not overrule the *McDonnell Douglas* burden-shifting method of proof, and its prima facie elements, instead applied a brief three-part test as a substitute for what the court called the "cumbersome" indirect and direct methods of proof. The three parts are: (1) membership in a protected class; (2) an adverse employment action; and (3) evidence from which "a rational jury could conclude that the employer took that adverse action on account of . . . protected class, not for any non-invidious reason."

Applying that test, the court noted that there was no evidence of racial slurs or other manifest racial hostility; no evidence that the plaintiff was more qualified than the individuals hired into the positions plaintiff sought; and no evidence that race played a factor in the temporary assignment the plaintiff disliked. In short, the court looked at the evidence the plaintiff presented and saw nothing that could lead a rational jury to conclude that race discrimination occurred—and the court affirmed summary judgment in the employer's favor as a result.

Now, what does this mean as a practical matter for human resources and management professionals? It appears to signal the court's interest in adjudicating discrimination cases on a common-sense basis. That sounds simple, but whether it actually streamlines the litigation of discrimination cases—especially a case based heavily on circumstantial evidence—remains to be seen.