

The Seventh Circuit Clarifies Evidentiary Standards in Employment Discrimination Cases

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In [Ortiz v. Werner Enterprises, Inc.](#), the Seventh Circuit stated in very clear terms that lower courts and parties to discrimination actions should not divide evidence into direct and circumstantial buckets under the familiar direct and indirect methods of proving discrimination under Title VII of the Civil Rights Act of 1964. The Court's instruction should apply with equal force to claims brought under the Age Discrimination and Employment Act and the Americans with Disabilities Act.

The Underlying Case

Werner Enterprises terminated Ortiz for falsifying records. Ortiz pointed to a number of key facts supporting his claim that his national origin, not the alleged falsification of records, motivated the termination. Such evidence included his supervisors' use of racial slurs directed at him over a number of years, his own compliance with employer policy, and the employer's deviation from policy with respect to his termination. The District Court granted summary judgment analyzing the direct and indirect evidence separately. With respect to evidence under the "direct" method, the judge found there was no evidence connecting the slurs and epithets to Ortiz's discharge. The Court also ruled there was not enough circumstantial evidence to rebut the legitimate and non-discriminatory reason (falsification of records) offered by the employer.

The Seventh Circuit Opinion

The Seventh Circuit took sharp exception to this "shoehorn[ing]" of evidence into methods of proof. Facts and claims are not analyzed differently merely because they might be supported by "direct" or "indirect" evidence. Rather, the analysis is and always has been whether a prohibited factor motivated the decision in question. Therefore, courts and practitioners should "aggregate the possibilities to find an overall likelihood of discrimination." After all, evidence is evidence, the Court noted, and the ultimate question is whether a prohibited factor motivated the employment decision in question.

Probably regretting its earlier use of the phrase, “convincing mosaic” of circumstantial evidence, the Seventh Circuit also held that that this phrase was not meant to create a new legal “test”, but rather was meant as a metaphor to illustrate why courts should not try to differentiate between direct and indirect evidence.

The Court ultimately concluded that summary judgment was inappropriate under the circumstances, because all of the evidence, analyzed in the aggregate, demonstrated a material question of fact concerning whether the plaintiff was terminated due to his national origin.

Notably, the Court was careful to underscore that its holding does not question or affect Supreme Court jurisprudence, including its landmark decision in *McDonnell Douglas Corp. v. Green*, which established the Title VII burden-shifting framework, or any other burden-shifting framework. The goal of its decision was to correct the commonly held but incorrect proposition that evidence “must be sorted into different piles, labeled ‘direct’ and ‘indirect’ that are evaluated differently.”

So what does this mean going forward?

Ortiz may signal a diminishing importance of the *prima facie* case, shifting emphasis to the ultimate inquiry of whether the employer’s rationale for its decision is a pretext for unlawful discrimination. It also highlights the Seventh Circuit’s impatience with evidentiary constructs that distract the parties and the courts from the ultimate question of motivation. Evidence is evidence, and with that in mind, the parties, district courts and Seventh Circuit should view evidence in its totality to determine whether the employer was motivated by bias. Labeling evidence as direct or indirect, and then analyzing it separately is improper.

If you have questions about *Ortiz* and what this means for you going forward, please contact [Tom Luetkemeyer](#) or your Hinshaw lawyer.

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