

FEDERAL APPEALS COURT REAFFIRMS ALTERNATIVE APPROACH TO PROVING DISCRIMINATION: 5 THINGS EMPLOYERS NEED TO KNOW

Insights
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The 11th US Circuit Court of Appeals is continuing to reshape how judges evaluate evidence in employment discrimination and retaliation cases. Its December 5 decision in *Ismael v. Roundtree* further distances the court from the traditional burden-shifting framework and reinforces its preference for a “convincing mosaic” standard. This development could make it more difficult for employers to obtain early dismissal in discrimination and retaliation lawsuits – and employers in the 11th Circuit (Florida, Georgia, and Alabama) should take note. Here’s a rundown of the ruling, what the “convincing mosaic” standard could mean for your workplace litigation strategy, and five compliance steps to take now.

A Quick Refresher: *McDonnell Douglas* vs. Convincing Mosaic

For decades, courts relied on the US Supreme Court’s *McDonnell Douglas* framework to analyze circumstantial evidence of discrimination. Under that approach, once an employee establishes a prima facie case, the employer must articulate a legitimate, non-discriminatory reason for the adverse action – and the burden then shifts back to the employee to show that reason is pretextual, or in other words, meant to hide discrimination.

The 11th Circuit has increasingly criticized the *McDonnell Douglas* framework as confusing and often misapplied. In its latest opinion, *Ismael v. Roundtree*, the court emphasized that judges have been placing too much weight on whether an employee can disprove the employer’s stated reason for

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the adverse employment action, rather than focusing on the ultimate question: Could a reasonable jury infer unlawful discrimination or retaliation when viewing all of the evidence together?

Under the “convincing mosaic” standard, courts must consider the totality of the evidence – including suspicious timing, inconsistent explanations, differential treatment of similarly situated employees, and ambiguous statements – without forcing the analysis into rigid procedural steps.

Why This Matters for Employers

Under this approach, the court considered the totality of the circumstances when reviewing adverse employment actions, as opposed to the more traditional framework that places the burden on the employee to prove that the employer’s justification for the decision is illegitimate.

The court made clear that an employer’s legitimate business reason remains relevant, but it is no longer sufficient, standing alone, to end a case at the summary judgment stage. As a result, employers should expect:

- Increased scrutiny of circumstantial evidence;
- Greater difficulty obtaining early dismissal of discrimination and retaliation claims; and
- More cases proceeding to trial, even where performance or policy violations are at issue.

The 11th Circuit’s renewed emphasis on this “convincing mosaic” standard underscores a plaintiff-friendly shift in how discrimination and retaliation claims are evaluated.

Practical Steps Employers Should Take Now

To reduce risk under this evolving standard, employers should focus on consistency, clarity, and documentation across all employment decisions.

1. Clearly Define Essential Job Functions

Employees should have a clear understanding of their roles and responsibilities. Well-defined job descriptions and documented performance expectations allow employers to evaluate performance objectively and explain employment decisions more persuasively. They also make it easier to



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compare treatment across employees and defend future employment actions.

2. Treat Similarly Situated Employees Consistently

Courts will closely examine how comparable employees are treated – particularly with respect to discipline, investigations, work schedules, remote work privileges, and policy enforcement. In *Ismael*, evidence that other employees were not investigated for similar policy violations contributed to the plaintiff’s “convincing mosaic” of evidence.

Consistency is key. If a policy violation warrants an investigation or discipline, ensure that response is applied uniformly across the workforce.

3. Maintain Robust Performance Feedback and Reviews

Plaintiffs often rely on “suspicious timing” arguments, claiming that adverse actions followed protected activity without warning. An adverse employment action should not be a surprise. Regular performance evaluations, documented feedback, and objective metrics (such as quotas, customer satisfaction scores, or productivity benchmarks) help counter claims that an employment decision was sudden or retaliatory.

Structured performance management benefits both employers and employees – and provides powerful evidence in litigation.

4. Update and Enforce Workplace Policies

Comprehensive, up-to-date policies should address performance expectations, codes of conduct, investigation procedures, and complaint reporting mechanisms. These policies should be distributed during onboarding, acknowledged in writing, and consistently enforced.

Management must be trained on how to identify policy violations and follow established procedures. Courts will closely examine whether policies were followed as written.

5. Document Your Process

Clear, contemporaneous documentation remains one of the strongest tools for defending employment decisions. Emails, internal messages, performance notes, and investigation

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records help avoid inconsistent recollections and demonstrate fair, non-discriminatory decision-making.

When litigation arises, written records often make the difference between credibility and confusion.

Conclusion

If you have any questions about strategies or best practices, feel free to contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Alabama, Georgia, or Florida offices](#). We will continue to provide tips, guidance, and updates on this and other workplace topics, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox.