

APPEALS COURT SAYS NO EXTRA HURDLE FOR MAJORITY-GROUP PLAINTIFFS BRINGING NEW JERSEY DISCRIMINATION CLAIMS: 4 STEPS FOR EMPLOYERS

Insights
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Appeals Court Says No Extra Hurdle for Majority-Group Plaintiffs Bringing New Jersey Discrimination Claims: 4 Steps for Employers

“Majority-group” plaintiffs will now have an easier time bringing employment discrimination claims under New Jersey state law. The 3rd US Circuit Court of Appeals recently tossed out New Jersey’s longstanding heightened evidentiary standard for majority-group plaintiffs – such as heterosexual or White workers – alleging workplace discrimination under the New Jersey Law Against Discrimination (NJLAD). The decision aligns with a Supreme Court ruling last year that did the same for federal Title VII claims. The appeals court’s March 6 decision underscores the litigation risks associated with employment decisions that consider race, religion, or other protected characteristics. Here’s everything you need to know about the ruling and four proactive steps to consider for your business.

Case Background

[Massey v. Borough of Bergenfield](#) centers on a 2019 promotion decision in the Bergenfield Police Department. Christopher Massey, a White male, had served the department since 1995 and held leadership positions such as Deputy Chief and acting Officer-in-Charge. When the Borough Council considered candidates for the Chief of Police role, they chose Captain Mustafa Rabboh, an Arab

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Muslim officer who had joined the department in 2003, over Massey.

Massey filed suit in New Jersey federal court, alleging violations under the NJLAD (as well as federal civil rights laws). The district court granted summary judgment in favor of the Borough and individual council members. In its decision regarding the NJLAD claim, the court invoked New Jersey's "background circumstances" rule, which requires majority-group plaintiffs to demonstrate that they have been victimized by the "unusual employer" who discriminates against majority-group employees.

The 3rd Circuit's Decision in *Massey*

The 3rd Circuit held that this background circumstances rule should no longer apply in NJLAD cases. In reaching this conclusion, the court predicted that New Jersey's state Supreme Court would abandon the rule because it conflicts with the text of the NJLAD and would rely on the U.S. Supreme Court's recent [decision in *Ames v. Ohio Department of Youth Services*](#).

In *Ames*, the Supreme Court unanimously rejected the federal version of the rule under Title VII, concluding that the statute prohibits discrimination against "any" individual and does not impose a higher burden on majority-group plaintiffs. The 3rd Circuit predicted the NJ Supreme Court would follow suit regarding NJLAD claims because the state law contains identical language and New Jersey courts frequently look to federal precedent when interpreting the statute.

What Does This Mean for Your Business?

Following the ruling, claims by majority-group employees under New Jersey's antidiscrimination law will now be analyzed under the standard *McDonnell Douglas* burden-shifting framework without any additional evidentiary hurdles.

What's the *McDonnell Douglas* Test?

The 1973 SCOTUS decision in *McDonnell Douglas Corp. v. Green* established a multi-part test for courts to review claims under federal antidiscrimination law. Courts have interpreted the first step to require a plaintiff to show that:

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1. they are a member of a **protected class**,
2. they were subject to an **adverse employment decision**,
3. they were **qualified** for the relevant position, and
4. their employer **gave favorable treatment to a similarly qualified person who was not a member of the same protected class**.

Then, the burden shifts to the employer to provide a legitimate, nondiscriminatory explanation for the adverse employment action.

Finally, the burden shifts back to the plaintiff to show the employer's stated reasons for adverse action are "pretextual" or not the real reason for the decision.

Applying that framework, the 3rd Circuit concluded that Massey had produced sufficient evidence to proceed to trial on his NJLAD and Equal Protection claims. The record included both direct and circumstantial evidence suggesting that race and religion may have been considered in the promotion decision.

For example, the defendants acknowledged that Rabboh's race and religion were among the factors considered during the selection process. As a result, the 3rd Circuit reinstated Massey's NJLAD and federal claims and sent the case back to the district court for a trial on the merits.

Key Takeaways for Employers

The decision has several important implications for employers in New Jersey and throughout the 3rd Circuit (which also includes Delaware, Pennsylvania, and the U.S. Virgin Islands):

- **Majority-group employee claims may increase.** Majority-group plaintiffs will no longer face a higher burden to survive employer-initiated summary judgment motions.
- **Diversity considerations must be carefully handled.** While employers may promote diversity and inclusion initiatives, the appeals court made clear that race or other protected characteristics may not be considered when making employment decisions even if done under the

banner of a diversity, equity, and inclusion program. This means employers should focus on race-neutral criteria and ensure that decision-making avoids reliance on protected characteristics, even unintentionally.

- **Decisionmaker statements can create litigation risk.** Comments referencing race, religion, or demographic representation may be well-intentioned but can also be used as evidence that protected characteristics influenced a decision.
- **Summary judgment may be more difficult to obtain.** Without the heightened evidentiary standard, courts may allow more cases to proceed to trial when the record contains evidence suggesting discriminatory intent.

Practical Recommendations for Employers

1. Review promotion and hiring practices. Ensure employment decisions are grounded in objective, job-related criteria and supported by documentation. Avoid language suggesting that employment decisions are based on protected characteristics or to achieve diversity objectives or goals.

2. Update training for managers and decision-makers. Training should address the legal risks associated with considering protected characteristics in connection with employment decisions.

3. Evaluate diversity initiatives. Organizations should confirm that diversity and inclusion efforts are structured in a way that complies with anti-discrimination laws.

4. Document decision-making processes. Maintain clear records showing that employment decisions are based on qualifications, performance, and legitimate business considerations.

Conclusion

We will continue to monitor these developments and provide the most up-to-date information directly to your inbox, so make sure you are subscribed to [Fisher Phillips' Insight System](#). For more information and assistance in reviewing your workplace practices or taking the actions described above, contact the authors of this Insight, or any attorney in our [Employment Discrimination and Harassment Practice Group](#).

