

## Seventh Circuit Determines That Retaliatory Discharge Cases In Federal Court Are Subject To More Demanding Illinois Law Framework Instead Of More Lenient, *McDonnell Douglas* Standard

In *Gacek v. American Airlines, Inc.*, No. 09-3131 (July 15, 2010), the U.S. Court of Appeals for the Seventh Circuit addressed the standard for retaliatory discharge cases under Illinois law when litigated in federal courts, providing further support for employers on an important question of law. The unanimous Seventh Circuit opinion, authored by Judge Posner and joined by Judges Hamilton and Wood, held that the proper standard for retaliatory discharge cases under Illinois law litigated in federal court is not the more lenient, burden-shifting *McDonnell Douglas Corp. v. Green* standard utilized by federal courts in most discrimination cases, but the more demanding Illinois state law standard. Under the Illinois law standard, a plaintiff is required to prove causation to succeed on a retaliatory discharge case, while under the *McDonnell Douglas* framework, a plaintiff can prevail by proving only that the reasons offered by the employer for the termination were pretextual or unworthy of belief. The Seventh Circuit noted that “Illinois [] doesn’t want to give plaintiffs in retaliatory discharge cases governed by state law that leg up” by applying the *McDonnell Douglas* framework.

The case arose from American Airlines’ termination of former baggage handler John Gacek based on his dishonesty regarding his attendance. Gacek filed suit against American Airlines alleging retaliatory discharge in violation of the Illinois Worker’s Compensation Act. Gacek’s evidence for the alleged retaliatory discharge focused on the fact that he was fired approximately one month after sustaining an on-the-job injury and that, more than 2 1/2 years after his injury and termination, he filed a claim for benefits with the Illinois’ Worker’s Compensation Commission. American Airlines denied that its termination of Gacek’s employment was retaliatory, and stated that Gacek was terminated after it learned that he falsely called in sick with the flu.

Judge Conlon of the U.S. District Court for the Northern District of Illinois granted summary judgment to American Airlines in 2009, finding that Gacek did not present any evidence that his termination was pretextual or that he was terminated for any reason other than his lies to the company. The district court concluded that Gacek could not establish a causal connection between his termination and his exercise of workers’ compensation rights because Gacek clearly lied – on more than one occasion – about his reasons for taking leave, and such dishonesty constitutes valid grounds for immediate termination, consistent with the express terms of American Airlines’ policies. The court also rejected Gacek’s arguments concerning pretext.

On appeal, the Seventh Circuit noted that the Supreme Court of Illinois had previously rejected application of the *McDonnell Douglas* framework to cases of retaliatory discharge because it was “unwilling to expand the tort of retaliatory discharge by reducing plaintiff’s burden of proving the elements of the tort.” See *Clemons v. Mech. Devices Co.*, 704 N.E.2d 403, 407-08 (Ill. 1998). Accordingly, the court concluded that the issue was one of substance, rather than procedure, under the *Erie* doctrine, and thus the federal courts were required to apply the Illinois law framework to these types of cases when litigated in federal court. Winston attorneys Kevin M. Cloutier, Amanda C. Wiley, and Alia Ornstein represented American Airlines, Inc. in this action before both the trial and appellate courts.

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