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Complaints Need Not Include Facts Which Would Support A Prima Facie Case Of Discrimination Under McDonnell Douglas

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The Sixth Circuit Court of Appeals recently reversed a decision to dismiss a complaint in a situation where the district court found that the complaint did not plead enough facts to support a *prima facie* case of discrimination under the well-established *McDonnell Douglas* burden-shifting method.

In *Keys v. Humana,* No. 11-5472, 2012 WL 2505534 (6th Cir. Jul. 2, 2012), the plaintiff filed a complaint in which she alleged that she and several other African-American employees were fired or forced to resign because of their race in violation of Title VII and Section 1981. Her former employer filed a motion to dismiss the complaint, arguing that the plaintiff had not pled facts suggesting that she had been treated differently than a similarly situated non-African-American employee. The district court agreed, and it dismissed the plaintiff's complaint as a result.

Those who regularly practice employment law know that plaintiffs can prove disparate treatment by means of the direct method of proof, which requires the plaintiff to introduce direct or circumstantial evidence of discrimination. Plaintiffs can also prove disparate treatment by means of the indirect method of proof, which requires the plaintiff to establish a prima face case of discrimination. To prove a *prima facie* case in *Keys*, for example, the plaintiff will need to demonstrate – among other things – that she was qualified for her job and that she was treated less favorably than a similarly situated employee outside of her protected class.

In its decision, the Sixth Circuit emphasized that there is more than one way to skin a cat as far as disparate treatment cases are concerned. It observed that a plaintiff can succeed even if *McDonnell Douglas* is inapplicable. What's more, it found that the plaintiff had alleged facts that, if true, would be sufficient to establish a *prima facie* case of discrimination in any event.

Aggressively attacking a plaintiff's complaint early in the process is frequently a wise move. *Keys* reminds employers, however, that the strategy doesn't always work.

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