

EMPLOYMENT LAW UPDATE

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The U.S. Supreme Court Holds That Direct Evidence of Discrimination Is Not Required To Prove A Mixed-Motive Discrimination Case Under Title VII.

Desert Palace, Inc. v. Costa (June 9, 2003) WL 21310219

By David P. Borovsky and Jason A. Geller

Catharina Costa was terminated from her position as a warehouse worker with the Caesar's Palace Hotel after she was involved in an altercation with another employee. Costa then filed suit against her employer, alleging that she was discriminated against based on her gender. At trial, Costa produced only ***circumstantial evidence*** to prove her discrimination claims--i.e. evidence that she was treated less favorably than male employees. She did ***not*** produce any ***direct evidence*** of discrimination--i.e. evidence of derogatory gender-based comments made to her by the employer.

At the conclusion of the trial, the court gave the jury a "mixed motive" instruction which allowed the jury to award damages if it found that Costa's termination was motivated by ***both*** reasons (i.e. the altercation) and unlawful discriminatory motives. Desert Palace, Inc., the employer, objected to this instruction, arguing that a "mixed-motive" instruction was only proper when ***direct*** evidence of discrimination was introduced. Desert Palace asserted

that Costa had not introduced any such evidence.

The United States Supreme Court rejected Desert Palace's argument, ruling that circumstantial evidence alone is sufficient to prove "mixed motive" discrimination, provided it is sufficient to show that gender (or other prohibited basis) was a "motivating" factor for the employment decision.

This decision solidifies the value and significance of circumstantial evidence. In Title VII "mixed motive" cases, employers are not insulated from liability from discrimination simply because an employee has no direct evidence of discrimination.

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