

Employment-Related Claims

Discrimination in Employment (CA Fair Employment & Housing Act):

There are two general theories of discrimination: disparate treatment and disparate impact. Disparate treatment occurs when an employer treats an individual less favorably than others because of the individual's protected status (e.g., race, gender, age). Disparate impact occurs when an employer has an employment practice that appears neutral but has an adverse impact on members of a protected group.

Disparate Treatment: To establish this claim, you must prove that (1) the defendant was an employer or other covered entity (labor organization, employment agency or apprenticeship training program), (2) you were an employee of or applied to the defendant for a job, (3) the defendant discharged you, refused to hire you or took some other adverse employment action - *or* you were constructively discharged, (4) your protected status (e.g., race, gender, age 40 or older) was a motivating reason for the defendant's decision to discharge you, refuse to hire you or take the other adverse employment action, (5) you were harmed, and (6) the defendant's conduct was a substantial factor in causing your harm. CACI 2500, 2570 (age).

"Adverse Employment Action": Adverse employment actions are not limited to ultimate actions such as termination or demotion. There is an adverse employment action if the employer has taken an action or engaged in a course or pattern of conduct that, taken as a whole, materially and adversely affected the terms, conditions or privileges of an employee's employment. It includes conduct that is reasonably likely to impair a reasonable employee's job performance or prospects for advancement or promotion. However, minor or trivial actions or conduct that is not reasonably likely to do more than anger or upset an employee cannot constitute an adverse employment action." CACI 2509.