



## Instructing Juries on the Elements of Employment Discrimination: The Important Distinctions Made in *Schnitker v. Springfield Urban League, Inc.*

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Posted in Employment Law

While movies and television shows never include a scene about jury instructions, in which the attorneys make impassioned (but boring) arguments about comma placement and the definitions of commonly used words, trial attorneys recognize that jury instructions can make or break a case. In a recent employment discrimination trial in Springfield, Illinois, faulty jury instructions may have cost the plaintiff a verdict in her favor, damages in the amount of \$100,000, and attorney's fees for a case that has been litigated since 2011.

The case of *Schnitker v. Springfield Urban League, Inc.*, 2016 IL App (4<sup>th</sup>) 150991, was tried in Sangamon County, Illinois in July 2015. Plaintiff Jamie Schnitker alleged that she was the victim of illegal discrimination by her employer when she was not recalled to her teaching position at the Springfield Urban League's Head Start program in Jacksonville, Illinois. According to Ms. Schnitker, her site supervisor, who was African-American and Pentecostal by religion, had slowly been replacing vacant positions at the Jacksonville facility with new staff members who were also African-American and/or affiliated with the supervisor's church. After receiving a termination letter because of concerns over grant funding, Ms. Schnitker reported for orientation on August 23, 2010, in spite of not receiving a return-to-work letter, as most of her co-workers had received. When she was asked to leave orientation, she allegedly reacted by cursing, throwing a telephone, and being disruptive to the point of having to be escorted from the property. Ms. Schnitker denied engaging in this behavior, but the employer claimed that this reaction was the reason she was not recalled to teach. A recently certified teacher, who was both African-American and Pentecostal, was instead hired as a full-time teacher.

Ms. Schnitker initially filed a charge of discrimination with the Illinois Department of Human Rights, which claimed that the defendant discriminated against her on the basis of her religion and her race. The Department investigated her claim and found a lack of substantial evidence of discrimination, after which Ms. Schnitker filed a civil claim in Sangamon County, Illinois, under the Illinois Human Rights Act.

After a one-week trial, a Sangamon County jury returned a verdict in favor of plaintiff and against defendant on both counts of discrimination and assessed damages in the amount of \$100,000.00 on August 5, 2015.

On appeal, the defendant argued that the trial court erred in giving several jury instructions that misstated the plaintiff's burden of proving discrimination under the Illinois Human Rights Act. In particular, the defendant challenged the plaintiff's "elements" instruction, which informs the jury of each element the plaintiff must prove by a preponderance of the evidence in order to prevail on her claims. The elements instruction proposed by the plaintiff and accepted by the judge did not instruct the jury on the issue of causation because the plaintiff successfully argued that she did not have to prove

causation because discrimination based on pretext is not a tortious offense. The defendant objected to the plaintiff's proposed instruction and offered its own causation language, but the trial court chose to give the plaintiff's version over objection. The elements instruction also instructed the jury on the standard for a mixed-motive discrimination claim, which drew another objection from the defendant.

In considering the necessity of causation, the Appellate Court considered the declared policy of the Illinois Human Rights Act: "[t]o secure for all individuals within Illinois the freedom from discrimination against any individual *because of* his or her race, color, [or] religion." (Emphasis added.) 775 ILCS 5/1-102(A). In order to effectuate this purpose, the Act makes it "a civil rights violation" for any employer to refuse to renew employment "*on the basis of* unlawful discrimination." 775 ILCS 5/2-102(A).

Defendant argued that the missing causation language reduced Plaintiff's burden at trial by merely requiring that she prove that the defendant hired similarly situated non-Caucasian or Pentecostal teachers, regardless of whether the decision to hire was based on a discriminatory reason or a non-discriminatory reason. This instruction could also lead the jury to find in favor of the plaintiff because the employer hired similarly situated non-Caucasian or Pentecostal teachers, even if the jury rejected the plaintiff's pretext argument and believed that the plaintiff was not rehired because she acted inappropriately at the orientation event. The Court agreed that the language of the Act required plaintiff to prove a causal link between her race or religion and the decision not to recall her for employment.

In reaching its conclusion, the Court made some important distinctions for employment law practitioners. First, the Court considered the difference between presenting direct and indirect evidence of discrimination, concluding that Ms. Schnitker's claim fell under the latter category. Under the indirect method, plaintiffs must first establish a *prima facie* case of discrimination, after which the employer must rebut the presumption of discrimination by articulating, but not proving, a legitimate nondiscriminatory reason for its decision. The burden then shifts back to the Plaintiff to prove by a preponderance of the evidence that the reason articulated by the employer is actually a pretext, or lie, to cover up the true motive, which is illegal discrimination. Under this approach, the ultimate burden of persuading the trier of fact remains with the plaintiff at all times.

It was this indirect that the plaintiff advanced in her case against the Springfield Urban League. She met her *prima facie* case by demonstrating that similarly situated individuals of a different race and/or religion were treated more favorably, to which the defendant responded by articulating its nondiscriminatory reason for not rehiring her: her alleged behavior at orientation. According to the U.S. Supreme Court, once an employer has offered a non-discriminatory rationale for its decision, the ultimate issue is whether the defendant intentionally discriminated against the plaintiff. *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715 (1983). "In other words, is the employer... treating some people less favorably than others *because of* their race, color, religion, sex, or national origin." (Emphasis added) *Id.* (internal citations omitted).

During the appellate argument, Plaintiff actually relied on this U.S. Supreme Court decision of for the proposition that but-for causation is not required in employment discrimination cases. In its analysis of this argument, the Fourth District concluded that *Aikens* did not discard the need for but-for causation, but instead held that when a claim is not dismissed for lack of a *prima facie* case, the issue of whether a

*prima facie* case exists is not appropriate for jury consideration because the ultimate question is whether there was discrimination. This inquiry requires the question of causation.

Plaintiff also argued on appeal that if causation *was* a necessary component of the jury instructions, introductory language in several instructions satisfied that requirement, including the line, “Plaintiff claims that she was not rehired to her teaching position *because of* her race [religion]”; and “You must decide whether defendant discriminated against Plaintiff *because of* her race or religion.” (Emphasis added.) The appellate court held that this language was insufficient because it did not appear in the elements instruction, which sets forth the essential elements that a plaintiff needs to prove. The general language quoted by the plaintiff merely describes the nature of the claims, and does not explicitly direct the jury that the plaintiff has the burden of showing a causal relationship between her race/religion and the decision not to rehire her.

Ultimately, the Appellate Court concluded that the defendant’s proposed instruction, which directed the jury that the plaintiff bore the burden of proving that “the Defendant did not rehire Plaintiff because of her race [religion],” more accurately stated the law and should have been given. The Court further held that the defendant had been prejudiced by this instruction, and reversed the jury’s verdict in favor of Ms. Schnitker.

After deciding that reversal was necessary due to the lack of a causation instruction, the Appellate Court went on to consider whether the jury should have been instructed on the mixed-motive theory of employment discrimination because of the likelihood that the issue would come up again on remand. The Court began its analysis by recognizing that Illinois courts apply the mixed-motive inquiry to discrimination cases when appropriate, and framing the issue on appeal as whether this instruction was appropriate for the evidence presented at trial. The Court distinguished between the legal concepts of pretext and mixed motive, noting that the two are not interchangeable. In order for a mixed-motive instruction to be appropriate, the plaintiff must have direct evidence that the decisionmaker relied on illegal criteria in reaching its decision. This means that the plaintiff needed direct evidence, like comments from her supervisor linking her employment status to her race or religion, to demonstrate a connection between the illegal considerations and the decision not to rehire her before she could pursue a mixed-motive theory of discrimination. This type of evidence is not absolutely required to prevail on a discrimination claim because plaintiffs can pursue claims based on indirect evidence, but this type of evidence *is* required of a plaintiff pursuing a mixed-motive claim.

In reviewing the evidence presented at trial, the Appellate Court concluded that the plaintiff did not present direct evidence of discrimination from which a jury could have concluded that her employer’s motives were a mix of legitimate and illegitimate reasons. In fact, the plaintiff denied her employer’s claim that she acted unprofessionally at orientation, which would have been the “legitimate” part of a mixed-motive claim. The theory of Ms. Schnitker’s case was obviously based on pretext, where she asked the jury to disbelieve the employer’s stated reason for not rehiring her based on the indirect evidence presented, i.e., that similarly situated African American Pentecostals were treated more favorably. Thus, because pretext and mixed-motive claims are not interchangeable, and because Ms. Schnitker’s claim was based on a pretext theory, the jury should not have been instructed on the mixed-motive theory.

The Appellate Court held that the lack of a causation instruction and the erroneous inclusion of a mixed motive instruction amounted to prejudicial errors which required reversal of the jury's verdict. Ms. Schnitker filed a Petition for Leave to Appeal with the Illinois Supreme Court, but that petition was denied on March 29, 2017, leaving the Appellate Court's reversal in place and requiring a new trial of the matter in Sangamon County.

The takeaway for employment law practitioners is that although many of the various standards and tests for employment discrimination are similar in nature and may rely on the same or very similar facts, the jury must be clearly instructed on how to make the ultimate decision as to whether the employer has treated the plaintiff less favorably than others because of a protected characteristic. Moreover, the jury may *only* be instructed on the theory of recovery advanced by the plaintiff in the particular case, and not on every basis possible for employment discrimination claims. Although jury instructions conferences may never generate Oscar or Emmy buzz, distinguishing between the various types of employment discrimination claims may be the most critical part of any real-life courtroom drama.

**Tags:** Employment Discrimination, Jury Instructions