



[Federal Appeals Court Finds Illinois Law Applies To Retaliatory Discharge Lawsuits, Placing Bigger Evidence Burden on Plaintiffs](#)

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On July 15, 2010, the United States Court of Appeals for the 7th Circuit released its opinion in [Gacek v. American Airlines, Inc., No. 09-3131 \(July 15, 2010\)](#) – and it’s big news for plaintiffs seeking justice from evildoing employers. The news isn’t good.

Illinois Retaliatory Discharge Plaintiff’s Burden of Proof

In the case, the Seventh Circuit considered Illinois workers suing for justice in federal court after being harmed for retaliatory discharge.

What is retaliatory discharge? In some jurisdictions, it’s known as [“wrongful discharge”](#) or [“wrongful dismissal”](#) and it happens when someone is fired without good cause as the employer retaliates against them – firing them in response to an action that the worker has taken. Whistleblowers, for example, risk retaliatory discharge by their employer.

In this month’s decision, all the 7th Circuit justices agreed, issuing a unanimous opinion written by Judge Posner which states that the legal standard in these lawsuits is not the federal standard used in federal court pursuant to *McDonnell Douglas Corp. v. Green*, but instead the Illinois state law standard which requires a plaintiff to prove causation.

What’s the difference? Under the federal standard found in *McDonnell Douglas*, the plaintiff only needs to show the employer’s reasons for firing the plaintiff were just pretext — unworthy of belief. That’s a lesser burden than having to prove causation.

Gacek and the Erie Doctrine

In the *Gacek* opinion, Judge Posner notes that in *Clemons v. Mech. Devices Co.*, 704 N.E.2d 403, 407-08 (Ill. 1998), the Illinois Supreme Court rejected the *McDonnell Douglas* standard because the state high court was “... unwilling to expand the tort of retaliatory discharge by reducing plaintiff’s burden of proving the elements of the tort.”

With this precedent in place, the opinion relied upon the [longstanding *Erie* doctrine](#) which requires the federal courts to apply state law in substantive issues that come before it. The 7th Circuit felt legally bound to adhere to the Illinois Supreme Court's rationale in *Clemons*.

No word yet on whether or not the decision will be appealed.