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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

ELIAS MAKERE,

)

Petitioner,

)

)

Case No. 18-0373

vs.

)

2017-01432

)

ALLSTATE CORPORATION,

)

Respondent

)

**PETITIONER'S MOTION FOR OFFICIAL RECOGNITION
OF THE BURDINE FORMULA**

Petitioner, ELIAS MAKERE, on this 14th day of August, 2018, respectfully moves this Court to recognize the DOAH's historical use of the Burdine Formula [for judging employment discrimination disputes] in this case.

Key Points:

- | | |
|----------------|--|
| A.) Precedence | The DOAH has previously granted similar Motions for Official Recognition |
| B.) Relation | This Motion coincides with the upcoming Motion for Summary Judgment |

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Background: The Petitioner is preparing a Motion for Summary Judgment (which is based on the Burdine Formula)

Problem: The Respondent has refused to recognize the Burdine Formula

Request: The Court officially recognizes the Burdine Formula's use in employment discrimination cases

Alternative: The Court officially recognizes the Recommended Orders listed herein (Pages 4 and 5)

§120.569(2)(i) | Florida Statutes

"When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material."

§90.202 | Florida Statutes

"A court may take judicial notice of the following matters..."

...(5) Official actions of the legislative, executive, and judicial departments of the United States and of any state, territory, or jurisdiction of the United States...

...(6) Records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States...

...(12) Facts that are not subject to dispute because they are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned."

Legal Citations

- §120.569(2)(i) - Florida Statutes
- §90.202) - Florida Statutes

Precedence

- DOAH Case No. 09-4637 - Case Law (3/26/10)
- DOAH Case No. 12-2886 - Case Law (9/26/12)

The DOAH granted similar motions for official recognition

MOTION

Burdine Formula

"11. A petitioner in a discrimination case has the initial burden of proving a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed.2d 668 (1973).

12. If the petitioner proves a prima facie case, the burden shifts to the Respondent to proffer a legitimate nondiscriminatory reason for the actions it took. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L.Ed.2d 207 (1981). The respondent's burden is one of production, not persuasion, as it always remains Petitioner's burden to persuade the fact finder that the proffered reason is a pretext and that the respondent intentionally discriminated against the Petitioner. Burdine, 450 U.S. at 252-256."

- Honorable Don W. Davis, ALJ | Recommended Order | (4/22/02) | Case No. 03-4708

"26. Under the McDonnell analysis, in employment discrimination cases, Petitioner has the burden of establishing by a preponderance of evidence a prima facie case of unlawful discrimination. If the prima facie case is established, the burden shifts to the employer to rebut this preliminary showing by producing evidence that the adverse action was taken for some legitimate, non-discriminatory reason. If the employer rebuts the prima facie case, the burden shifts back to Petitioner to show by a preponderance of evidence that the employer's offered reasons for its adverse employment decision were pretextual. See Texas Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981)."

- Honorable Lawrence P. Stevenson, ALJ | Recommended Order | (3/5/13) | Case No. 12-3379

In summary, there are three elements to the Burdine Formula.

- Element A = Petitioner must establish a prima facie case of unlawful discrimination.
- Element B = Respondent must answer with a legitimate, nondiscriminatory reason for its actions.
- Element C = Petitioner must establish that the Respondent's reason was a pretext.

The Petitioner has recognized that the Burdine Formula could play a decisive role in this case. Therefore, he performed analysis to estimate the likelihood that it would be used. He gathered roughly 1,500 Recommended Orders ("ROs") from similar cases (ie, employment discrimination cases ending in a judicial determination). From there, he selected 100 of them – at random – to tabulate how often the Burdine Formula was used.

94 out of the 100 cases used the Burdine Formula (either explicitly, or implicitly). The remaining 6 cases partially used it. The results are summarized on the following pages.

Explicit Use of Burdine Formula

ID	Case Number	Date	Paragraph
101	83-003974	3/30/1984	20
102	84-000046	1/24/1985	11
103	84-003319	3/29/1985	18
104	85-000681	3/10/1986	24
105	85-003717	5/10/1986	22
106	87-003612	2/26/1988	35
107	87-003625	5/11/1988	23
108	87-005570	7/7/1988	24
109	88-000663	12/14/1988	26
110	89-001662	7/12/1989	13
111	89-003197	8/23/1989	26
112	89-005252	7/20/1990	20
113	89-006459	11/28/1990	109
114	91-002763	10/18/1991	8
115	91-005202	1/22/1992	5
116	91-005279	2/19/1992	26
117	92-002473	8/10/1993	45
118	92-003782	5/26/1993	45
119	93-001224	9/15/1993	34
120	93-001952	9/17/1993	29
121	93-002530	8/15/1994	55
122	93-005332	6/10/1994	38
123	94-001137	8/10/1994	12
124	94-001331	3/17/1995	28
125	94-001457	10/5/1994	23
126	94-002126	12/1/1994	11
127	95-002043	12/14/1995	77
128	96-004162	10/15/1997	127
129	97-000557	10/8/1998	27
130	99-001780	2/24/2000	40
131	00-001126	3/22/2001	32
132	00-001219	5/1/2001	47
133	00-004425	9/11/2001	12
134	01-004447	3/15/2002	58
135	02-002501	7/3/2003	13

ID	Case Number	Date	Paragraph
136	02-002660	11/1/2002	55
137	02-002746	12/11/2002	77
138	02-002779	3/4/2003	14
139	02-003286	9/24/2003	18
140	02-003678	7/2/2003	20
141	02-004522	3/4/2004	83
142	03-000137	6/24/2003	16
143	03-004708	4/22/2004	12
144	03-004848	5/28/2004	40
145	04-000192	6/16/2004	24
146	04-001197	9/3/2004	71
147	04-001376	12/10/2004	31
148	04-001601	9/22/2004	12
149	04-002035	10/7/2004	13
150	05-000632	11/10/2005	42
151	05-002600	11/1/2005	22
152	05-002996	10/25/2005	34
153	05-003667	1/3/2007	24
154	06-000413	9/14/2006	14
155	06-002460	11/3/2006	38
156	07-001972	9/28/2007	47
157	07-003369	3/5/2008	11
158	07-003975	5/30/2008	47
159	08-002573	2/2/2009	29
160	08-004573	2/6/2009	33
161	08-005374	5/29/2009	22
162	08-005487	2/24/2009	39
163	09-000710	10/13/2009	84
164	10-001176	5/11/2010	46
165	12-001702	12/11/2012	41
166	12-003379	3/5/2013	26
167	14-002527	11/26/2014	80
168	16-006631	3/24/2017	42

Please see **Exhibit 101** through **Exhibit 169** for details.

“Paragraph” denotes the first paragraph in the RO that mentioned the Burdine formula.

Implicit Use of Burdine Formula

ID	Case Number	Date	Element A	Element B	Element B
201	81-000085	8/26/1981	16	18	21
202	83-001049	12/6/1983	21	23	24
203	84-003605	9/30/1985	19	19	19
204	92-007529	4/26/1993	12	13	16
205	93-000318	10/28/1993	14	15	15
206	93-004849	12/9/1993	12	12	12
207	93-005329	6/13/1994	39	39	39
208	93-005330	9/8/1994	66	68	68
209	93-005334	2/28/1995	32	32	39
210	96-002868	8/20/2002	23	26	28
211	96-003323	7/24/1997	45	45	45
212	98-003611	7/14/2000	51	54	55
213	00-004433	6/12/2001	32	32	32
214	01-002619	10/12/2001	23	23	23
215	01-002904	11/28/2001	21	21	21
216	01-004887	3/13/2002	11	11	11
217	02-001765	12/19/2002	39	39	50
218	03-000048	9/22/2003	34	34	34
219	04-001051	7/9/2004	12	12	12
220	04-002033	6/7/2005	76	87	87
221	05-000094	9/13/2005	11	11	11
222	05-000566	8/11/2005	8	8	8
223	07-002655	11/2/2007	17	17	17
224	08-004556	2/13/2009	28	28	28
225	09-000092	5/22/2009	32	32	32
226	14-002617	4/29/2015	40	40	40

Note: The final three columns represent the paragraph where the “Element” is found [in the RO].

Please see **Exhibit 201** through **Exhibit 225** for details.

Partial/Incomplete Use of Burdine Formula

ID	Case Number	Date
301	80-001878	7/22/1981
302	84-000517	6/21/1984
303	98-002811	3/17/1999
304	00-001794	9/28/2001
305	00-004632	4/16/2001
306	03-002457	12/4/2003

Further analysis shows that these cases got ‘partial’ use of the Burdine Formula due to lacking Element A.

Pertinence

The Petitioner contends that there is at least a 94% chance that the Burdine Formula will be used in this case.

This analysis will be the basis for his upcoming settlement offer as well as his upcoming motion for summary judgment (if necessary).

CONFERRAL

On August 13, 2018, the Petitioner asked the Respondent to recognize the Burdine Formula. Afterwards, he followed up with a phone call. After receiving no answer he asked the Respondent if it opposed this Motion. The Respondent said that it did oppose the motion, but it did not state its grounds.

Nonetheless, the Petitioner believes the foregoing presents a sufficient and important reasons for recognition of the Burdine Formula.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests that this Court grant the Petitioner's Motion for Official Recognition of the Burdine Formula.

Dated this 14th Day of August, 2018.

Respectfully submitted,

ELIAS MAKERE

s/ Elias Makere

Pro Se

3709 San Pablo Rd. S # 701

Jacksonville, FL 32224

Tel: (904) 294-0026

E-mail: justice.actuarial@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2018, I electronically filed the foregoing with the Clerk of Courts by using the Florida Courts E-filing Portal which will send a notice of electronic filing to the following:

Liebler, Gonzalez & Portuondo
44 West Flagler Street
Courthouse Tower 25th Floor
Miami, FL 33130
(respondent's lawyer)

on behalf of:
Allstate Corporation
2775 Sanders Road F5
Northbrook, IL 60062
(respondent)

Tammy S. Barton, Agency Clerk
Florida Commission on Human Relations
Room 110
4075 Esplanade Way
Tallahassee, Florida 32399-7020
(agency)

Elias Makere
3709 San Pablo Rd. S #701
Jacksonville, FL 32224
(petitioner)

s/ Elias Makere

EXHIBIT 101

Case No. 83-3974 | 3/30/1984

20. In employment discrimination cases, where an individual alleges he was subject to disparate treatment because of his race, he has the initial burden of establishing a prima facie case of discrimination, by a preponderance of the evidence. If the complainant succeeds in proving a prima facie case of discrimination, the burden then shifts to the employer to articulate some legitimate, nondiscriminatory reason for the prospective employee's rejection. *Texas Dept. of Commonwealth Affairs v. Burdine*, 101 S. Ct. 1089 (1981).

EXHIBIT 102

Case No. 84-0046 | 1/24/1985

11. The Petitioner, in a case such as this, of course, carries the burden of establishing that an unlawful employment practice, including termination, has occurred. *Florida Department of Transportation v. J.W.C. Company, Inc.*, 396 So.2d 778 (Fla. 1st DCA 1981). In this regard, an opinion of the United States Supreme Court concerning the basic allocation of burdens and order of presentation of proof in an employment discrimination case is instructive. *Texas Department of Community Affairs v. Burdine*, 450 US 248, 101 S. Ct. 1089 (1981). In the *Burdine* case, the court held that the burden rests with the employee to prove by a preponderance of evidence a prima facie case of discrimination. If he succeeds, the burden shifts to the employer to articulate some legitimate, non-discriminatory reason for the employee's discharge. Should the employer carry this burden, the employee must then prove by a preponderance of evidence that the legitimate reasons offered by the employer were not the true reasons but were rather a pretext for employment discrimination.

EXHIBIT 103

Case No. 84-3319 | 3/29/1985

18. In a discrimination case the Petitioner has the initial burden of establishing a prima facie case of discrimination. If Petitioner succeeds in proving the prima facie case, the burden shifts to the Respondent to articulate some legitimate reason for the Petitioner's rejection. Should the Respondent carry this burden, Petitioner must then have the opportunity to prove, by a preponderance of the evidence, that the legitimate reasons offered by the Respondent were not its true reasons, but were a pretext for discrimination. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 253, 101 S.Ct. 1089, 1093, 67 L.Ed 2d 207 (1981).

EXHIBIT 104

Case No. 85-0681 | 3/10/1986

24. The burden of proof standards formulated for Title VII cases, and consequently for complaints brought under the Florida Human Rights Act have been set forth in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Although McDonnell Douglas was a hiring case, it is also applicable to discharge cases. Lincoln v. Board of Regents of University System, 697 F.2d 928, 937 (1983); Marks v. Prattco, Inc., 607 F.2d 1153 (5th Cir. 1979). Additionally, the burden of proof standards of McDonnell Douglas v. Green have been held applicable to age discrimination cases. Sutton v. Atlantic Richfield, Co., 646 F.2d 407 (9th Cir. 1981). Under this authority, the Petitioner has the initial burden of establishing a prima facie case by showing:

- (a) That she is a member of a protected class.
- (b) That she was qualified for her job.
- (c) That she was discharged despite the qualifications, and
- (d) That the employer filled the job with a non-protected class member. If the Petitioner meets this initial burden, the burden then shifts to the Respondent to articulate some legitimate, nondiscriminatory reason for the termination.

EXHIBIT 105

Case No. 85-3717 | 5/10/1986

22. In a discrimination case, the Petitioner has the initial burden of proving a prima facie case of discrimination by a preponderance of the evidence. If the Petitioner succeeds in establishing the prima facie case, the burden shifts to the Respondent to articulate some legitimate non-discriminatory reason for the actions complained of. Should the Respondent carry this burden, Petitioner must then have the opportunity to prove, by a preponderance of the evidence, that the legitimate reasons offered by the Respondent were not its true reasons, but were a pretext for discrimination. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089 (1981). To establish the prima facie case, the Petitioner must present facts which "raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration -of impermissible factors." Id. at 450 U.S. 254. It is at this point that Petitioner's burden of proving pretext and his ultimate burden of persuasion merge, requiring that the complainant establish the existence of intentional discrimination. In order to establish a prima facie case, the Petitioner must show: (1) that he belongs to a protected class; (2) that he was qualified for the particular position; and (3) that despite his qualifications, he was discharged. Chaline v. Koch, Inc., 693 F.2d 477 (5th Cir. Ct. App. 1982). The- Petitioner has failed to establish a prima facie case. Although the Petitioner established that he is a member of a protected group (black) and was in fact discharged by Respondent, he has not shown that he was qualified for the position of driver. As a probationary employee, the Petitioner was required to demonstrate that he could perform the essential duties of a driver. One of those functions was to properly fill out the paper work that was required to be completed upon delivery of merchandise. The evidence was unclear as to whether Petitioner was incapable of or simply unwilling to perform that task in the manner required by Respondent. Nevertheless, the Petitioner was given ample training and an ample opportunity to demonstrate to his employer that he could perform the duties required of a driver. However, this the Petitioner failed to do.

EXHIBIT 106

Case No. 87-3612 | 2/26/1988

35. In a case involving allegations of racial discrimination in employment, Petitioner has the burden of proving by a preponderance of the evidence a prima facie case of discrimination. If Petitioner meets this burden, Respondent then has the burden to articulate some legitimate, nondiscriminatory reason for its action or failure to act. If Respondent meets this burden, then Petitioner has the burden to prove by a preponderance of the evidence that the legitimate reasons offered by Respondent were not the true reasons but only a pretext for discrimination. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed. 2d 207 (1981).

EXHIBIT 107

Case No. 87-3625 | 5/11/1988

23. Once a respondent employer has rebutted the petitioner's assertions by articulating the legitimate nondiscriminatory reason, the petitioner must show by a preponderance of evidence that discriminatory intent motivated the employer's action. *Id.*, citing, *McDonald Douglas v. Green*, 411 U.S. 792, 804 (1973). One method by which a plaintiff may prove discriminatory intent is by showing that the employer's given explanation is pretextual. *Perryman*, 698 F.2d at 1142, citing, *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 256 (1981).

EXHIBIT 108

Case No. 87-5570 | 7/7/1988

24. In a discrimination case, Petitioner has the initial burden of establishing a prima facie case of discrimination. If Petitioner succeeds in establishing the prima facie case, the burden shifts to the Respondent to articulate some legitimate reason for the disparate treatment. Should Respondent carry this burden, the Petitioner must then have an opportunity to prove, by a preponderance of the evidence, that the legitimate reasons offered by the Respondent were not his true reasons, but were a pretext for discrimination. Texas Department of Community Affairs v. Burdine, 412 U.S. 248, 101 S.Ct. 1089, 67 L.Ed. 2d 207 (1981).

EXHIBIT 109

Case No. 88-0663 | 12/14/1988

26. The Petitioner bears the initial burden of establishing a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Teamsters v. United States, 431 U.S. 324 (1977). If the Petitioner sustains his initial burden, the Respondent would then have to establish some legitimate, nondiscriminatory reason for the action taken in order to rebut the inference of discrimination. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Thereafter, if Petitioner can show that Respondent's actions were simply a pretext for discrimination, Petitioner may still prevail. McDonnell Douglas, at 804-805; Burdine, at 256. See also Anderson v. Lykes Pasco Packing Co., 503 So.2d 1269 (Fla. 2nd DCA 1986).

EXHIBIT 110

Case No. 89-1662 | 7/12/1989

13. The Petitioner bears the initial burden of establishing a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Teamsters v. United States, 431 U.S. 324 (1977). If the Petitioner sustains his initial burden, the Respondent would then have to establish some legitimate, non-discriminatory reason for the action taken in order to rebut the inference of discrimination. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Thereafter, if Petitioner can show that Respondent's actions were simply a pretext for discrimination, Petitioner may still prevail. McDonnell Douglas, at 804-805; Burdine, at 256. See also Anderson v. Lykes Pasco Packing Co., 503 So.2d 1269 (Fla. 2nd DCA -1986).

EXHIBIT 111

Case No. 89-3197 | 8/23/1989

23. In McDonald Douglas v. Green, 411 US 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 US 240 (1981) the Supreme Court established and clarified the burden of proof in disparate treatment cases. McDonald Douglas places upon the plaintiff the initial burden of proving a prima facie case of discrimination. In a failure to hire or promote case, the plaintiff must prove (1) that he belongs to a protected group; (2) that he was qualified for the job for which the employer was seeking applicants; (3) that he was rejected despite his qualifications; and (4) that after rejection, the position remained opened and the employer continued to seek applicants with plaintiff's qualifications. McDonald Douglas v. Green, at p. 802.

EXHIBIT 112

Case No. 89-5252 | 7/20/1990

20. The Petitioner has the initial burden of establishing a prima facie case of discrimination. If Petitioner succeeds in proving the prima facie case, the burden shifts to Respondent to articulate some legitimate reason or the complained of. Should Respondent carry this burden, Petitioner must then have an opportunity to prove, by preponderance of the evidence, that the legitimate reasons offered by Respondent were not its true reasons, but were a pretext for discrimination. Texas Department of Community Affairs v. Burdline, 450 U.S. 248, 253, 101 S.Ct. 1089, 1093 (1991).

EXHIBIT 113

Case No. 89-6459 | 11/28/1990

109. The applicable model of proof in Title VII discrimination cases is that outlined in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 36 L.Ed.2d 668 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 67 L.Ed.2d 207 (1981). While Petitioner argues that the model of proof should be that utilized in cases arising under the Equal Pay Act, it is concluded that the Equal Pay Act and cases arising thereunder are inapplicable to the claims raised herein. The correct model of proof, as more particularly stated by the Court in McDonnell and Burdine, is:

EXHIBIT 114

Case No. 91-2763 | 10/18/1991

8. In *McDonnell Douglas Corp. v. Green* (McDonnell Douglas), 411 U.S. 792, 5 FEP Cases 965 (1973) and *Texas Department of Community Affairs v. Burdine* (Burdine), 450 U.S. 258, 25 FEP Cases 113 (1981), the U. S. Supreme Court established the basic allocation of burdens and order of presentation of proof in discrimination cases. The burden of proof was described by the U.S. Supreme Court in the Burdine decision as follows:

First the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant, to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons by the defendant were not its true reasons, but were a pretext for discrimination.

25 FEP Cases at 115 (citations omitted). These federal standards have been adopted by the Florida Commission on Human Relations and the Florida courts and are applicable to cases arising under Chapter 760, Florida Statutes. *School Board of Leon County v. Hargis*, 400 So.2d 103, 108 (Fla. 1st D.C.A. 1981); *Kilpatrick v. Howard Johnson Co.*, 7 FALR 5468, 5477 (1985); *Jo Nees v. Delchamps, Inc.*, 8 FALR 4389 (1986).

EXHIBIT 115

Case No. 91-5202 | 1/22/1992

5. She has the burden initially to prove facts making out a prima facie case that she was discharged on account of race, after which respondent need only articulate a legitimate, nondiscriminatory reason for the termination in order to place upon petitioner the burden of proving that the asserted reason is pretextual. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); Furnco Construction Corp. v. Waters, 438 U.S. 567 (1978); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

EXHIBIT 116

Case No. 91-5279 | 2/19/1992

26. In McDonald Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 258 (1981), the U.S. Supreme Court established the basic allocation of burden of proof in discrimination cases. Petitioner retains the burden of proof throughout the proceeding, although once a prima facie case of discrimination is established, the Respondent must articulate some legitimate, nondiscriminatory reason for the challenged action. Then Petitioner must prove by a preponderance of the evidence that the reasons offered are not true, but rather a pretext for discrimination.

EXHIBIT 117

Case No. 92-2473 | 8/10/1993

45. Since the Petitioner has not adduced direct evidence of discrimination, the standard of proof which applies to this proceeding is governed by *McDonnell-Douglas v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); and *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). The Petitioner in his trial brief lists the following elements of a McDonnell-Douglas prima facie case in a demotion case: (1) the plaintiff is in a protected class, (2) the plaintiff has suffered an unfavorable employment action by the employer covered by applicable law, (3) the plaintiff was performing his job at a level that met his employer's legitimate expectations, and (4) following his demotion, the employer sought a person outside the protected class to perform the same work, citing *Gilyard v. South Carolina Department of Youth Services*, 667 F.Supp. 266 (DSC 1985). This version of the McDonnell-Douglas test appears to be consistent with that used in *National Industries, Inc. v. Commission on Human Relations*, 527 So.2d 894, 896 (Fla. 5th DCA 1988) (in a Chapter 760, Florida Statutes, proceeding, the plaintiff met the burden of establishing a prima facie case by showing that the plaintiff was married, was performing her job in a satisfactory manner, and despite her satisfactory performance, she was discharged). 1/ In *Nelson v. School Board of Palm Beach County*, 738 F.Supp. 478 (S.D. Fla. 1990) (cited in Petitioner's trial brief), the court held that the plaintiff sufficiently pled the elements of a prima facie case under Title VII by alleging that she was doing "exemplary" work prior to her demotion.

EXHIBIT 118

Case No. 92-3782 | 5/26/1993

45. In McDonald Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 258 (1981), the U.S. Supreme Court established the basic allocation of burden of proof in discrimination cases. Petitioner retains the burden of proof throughout the proceeding, although once a prima facie case of discrimination is established, the Respondent must articulate some legitimate, nondiscriminatory reason for the challenged action. Then Petitioner must prove by a preponderance of the evidence that the reasons offered are not true, but rather a pretext for discrimination.

EXHIBIT 119

Case No. 93-1224 | 9/15/1993

34. In a case such as this, the Petitioner initially has the burden to at least prove a prima facie case of illegal discrimination. If a prima facie case is proven, the burden shifts to the Respondent to articulate legitimate nondiscriminatory reasons for the alleged disparate treatment or adverse action taken against the Petitioner. Then the burden returns to the Petitioner to prove that the articulated reasons are a mere pretext for intentional discrimination. See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 101 S.Ct. 1089, 1093, 67 L.Ed.2d 207 (1981).

EXHIBIT 120

Case No. 93-1952 | 9/17/1993

29. The Supreme Court established, and later clarified, the burden of proof in disparate treatment cases in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981) and again in the very recent case of St. Mary's Honor Center v. Hicks, U.S., ___113 S.Ct. 2742 (1993). The FCHR has adopted this evidentiary model. Kilpatrick v. Howard Johnson Co., 7 FALR 5468,5475 (FCHR 1985). McDonnell Douglas places upon the Petitioner the initial burden of proving a prima facie case of racial discrimination.

EXHIBIT 121

Case No. 93-2530 | 8/15/1994

55. The United States Supreme Court set forth the procedure essential for establishing claims of discrimination in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed. 2d 668 (1973), which was then revisited in detail in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981). Pursuant to the Burdine formula, the employee has the initial burden of establishing a prima facie case of intentional discrimination, which once established raises a presumption that the employer discriminated against the employee. The preeminent case at the present time in Florida is still Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991).

EXHIBIT 122

Case No. 93-5332 | 6/10/1994

38. The Supreme Court established, and later clarified, the burden of proof in disparate treatment cases in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981) and again in the very recent case of St. Mary's Honor Center v. Hicks, ___ U.S. ___, 113 S.Ct. 2742 (1993). The FCHR has adopted this evidentiary model. Kilpatrick v. Howard Johnson Co., 7 FALR 5468, 5475 (FCHR 1985). McDonnell Douglas places upon the Petitioner the initial burden of proving a prima facie case of racial discrimination.

EXHIBIT 123

Case No. 94-1137 | 8/10/1994

12. In McDonnell-Douglas Corporation v. Green, 411 U.S. 792, 5 FEP Cases 965 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 258, 25 FEP Cases 113 (1981), the U.S. Supreme Court established the basic allocation of burdens and order of presentation of proof in discrimination cases. The burden of proof is allocated by the U.S. Supreme Court in Burdine, as follows:

First the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant, to articulate some legitimate nondiscriminatory reason for the employee's rejection. Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons by the defendant were not its true reasons, but were a pretext for discrimination.

EXHIBIT 124

Case No. 94-1331 | 3/17/1995

28. The procedure for establishing claims of racial discrimination is set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed. 2d 668 (1973). That procedure was revisited in *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed. 2d 207 (1981). Pursuant to the Burdine formula, the employee has the initial burden of establishing a prima facie case of intentional discrimination. Once established, the prima facie case raises a presumption that the employer discriminated against the employee. The burden then shifts to the employer to present sufficient evidence to raise a genuine issue of fact as to whether the employer discriminated against the employee. The employer may do this by stating a legitimate, nondiscriminatory reason for the employment decision; a reason which is clear, reasonably specific, and worthy of credence. The employer is not required to persuade the trier of fact that its decision was actually motivated by the reason given. If the employer satisfies its burden, the employee must then persuade the fact finder that the proffered reason for the employment decision was a pretext for intentional discrimination. The employee may satisfy this burden by showing directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief.

EXHIBIT 125

Case No. 94-1457 | 10/5/1994

23. In a case such as this, the Petitioner initially has the burden to at least prove a prima facie case of illegal discrimination. If a prima facie case is proven, the burden shifts to the Respondent to articulate legitimate nondiscriminatory reasons for the alleged disparate treatment or adverse action taken against the Petitioner. Then the burden returns to the Petitioner to prove that the articulated reasons are a mere pretext for intentional discrimination. See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 101 S.Ct. 1089, 1093, 67 L.Ed.2d 207 (1981).

EXHIBIT 126

Case No. 94-2126 | 12/1/1994

11. The question of burden of proof in discrimination cases, including those involving the issue of discrimination because of disability, has been recently examined in the case of Department of Corrections v. Chandler, 582 So.2d 1183 (Fla. 1st DCA 1991), opinion on rehrg. dated July 10, 1991. The Chandler court described the method of proof in such a proceeding as follows:

Pursuant to the Burdine formula, [Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981)], the employee has the initial burden of establishing a prima facie case of intentional discrimination, which once established raises a presumption that the employer discriminated against the employee. If the presumption arises, the burden then shifts to the employer to present sufficient evidence to raise a genuine issue of fact as to whether the employer discriminated against the employee. The employer may do this by stating a legitimate, nondiscriminatory reason for the employment decision, a reason which is clear, reasonably specific, and worthy of credence. Because the employer has the burden of production, not of persuasion, which remains with the employee, it is not required to persuade the trier of fact that its decision was actually motivated by the reason given. If the employer satisfied its burden, the employee must then persuade the fact finder that the proffered reason for the employment decision was a pretext for intentional discrimination. The employee may satisfy this burden by showing directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision was not worthy of belief. If such proof is adequately presented, the employee satisfies his or her ultimate burden of demonstrating by a preponderance of the evidence that he or she has been a victim of intentional discrimination.

EXHIBIT 127

Case No. 95-2043 | 12/14/1995

77. The shifting burdens of proof in discrimination cases have most cogently been examined in *Department of Corrections v. Chandler*, 582 So. 2d 1183 (Fla. 1st DCA 1991). They are:

Pursuant to the [Texas Department of Community Affairs v.] *Burdine*, <450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 207 (1981)] formula, the employee has the initial burden of establishing a prima facie case of intentional discrimination which once established raises a presumption that the employer discriminated against the employee. If the presumption arises, the burden shifts to the employer to present sufficient evidence to raise a genuine issue of fact as to whether the employer discriminated against the employee. The employer may do this by stating a legitimate, nondiscriminatory reason for the employment decision, a reason which is clear, reasonably specific, and worthy of credence. Because the employer has the burden of production, not of persuasion, which remains with the employee, it is not required to persuade the trier of fact that its decision was actually motivated by the reason given. If the employer satisfies its burden, the employee must then persuade the fact finder that the proffered reason for the employment decision was a pretext for intentional discrimination. The employee may satisfy this burden by showing directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief. If such proof is adequately presented, the employee

EXHIBIT 128

Case No. 96-4162 | 10/15/1997

127. Petitioner alleges that Respondent treated him less favorably than other employees because of his race and gender. He also claims that Respondent retaliated against him for filing his charge of discrimination. Petitioner bears the ultimate burden of proving his allegations by a preponderance of the evidence. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981); McDonald Douglas v. Green, 411 U.S. 792, 804, (1973); Perkins v. School Bd. of Pinellas County, 902 F.Supp. 1503, 1506 (M.D. Fla. 1995).

EXHIBIT 129

Case No. 97-0557 | 10/8/1998

27. Since the school board has articulated a legitimate, non-discriminatory reason for failing to re-hire Mr. Jones, Jones has the burden of showing that the articulated reason is a pretext for what actually was intentional age discrimination. See Texas Dept. Of Community Affairs v. Burdine, 450 U.S. 248 (1981).

EXHIBIT 130

Case No. 99-1780 | 2/24/2000

40. The Supreme Court established, and later clarified, the burden of proof in disparate treatment cases in McDonnell Douglas Corp. vs. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs vs. Burdine, 450 U.S. 248 (1981), and again in the recent case of St. Mary's Honor Center vs. Hicks, 509 U.S. 502, 113 S.Ct. 2742 (1993). The FCHR has adopted this evidentiary model. Kilpatrick vs. Howard Johnson Co., 7 FALR 5468, 5475 (FCHR 1985). McDonnell Douglas places upon Petitioner the initial burden of proving a prima facie case of racial discrimination. See also Laroche vs. Department of Labor and Employment Security, 13 FALR 4121 (FCHR 1991); Davis vs. Humana of Florida, Inc., 15 FALR 231 (FCHR 1992).

EXHIBIT 131

Case No. 00-1126 | 3/22/2001

32. However, at all times, the ultimate burden of persuasion that Respondent intentionally discriminated against Petitioner remains with Petitioner. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

EXHIBIT 132

Case No. 00-1219 | 5/1/2001

47. In Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1991) and McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the United States Supreme Court set forth the requirements for proving a prima facie case of discrimination, allocated the burden of production, and established the order for presentation of proof in Title VII cases. The elements of a prima facie case of discrimination will vary depending on the factual context of the case. McDonnell Douglas Corp. v. Green, 411 U.S. at 802 n. 13; Schwartz v. State of Florida, 494 F. Supp. 574, 583 (N.D. Fla. 1980). However, McDonnell Douglas Corp. v. Green clearly provides:

that a Title VII plaintiff carries the initial burden of showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were "based on a discriminatory criterion illegal under the (Civil Rights) Act (of 1964)." Teamsters v. United States, 431 U.S. 324, 358 (1977).

EXHIBIT 133

Case No. 00-4425 | 9/11/2001

12. The burden of proof responsibilities in discrimination cases brought under Chapter 760, Florida Statutes, are best articulated in Department of Correction's vs. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991), citing with approval Texas Department of Community Affairs vs. Burdine, 450 U.S. 248, 101 Supreme Court 1089, 67 Lawyers Edition Second 207 (1981). The Chandler opinion is instructive in stating that:

Pursuant to the Texas Department of Community Affairs vs. Burdine, 450 U.S. 248, 101 Supreme Court 1089, 67 Lawyers Edition Second 207 (1981), formula, the employee has the initial burden of establishing a prima facie case of intentional discrimination, which once established raises a presumption that the employer discriminated against the employee. If the presumption arises, the burden shifts to the employer to present sufficient evidence to raise a genuine issue of fact as to whether the employer discriminated against the employee. The employer may do this by stating a legitimate, non-discriminatory reason for the employment decision, a reason which is clear, reasonably specific, and worthy of credence. Because the employer has the burden of production, not of persuasion, which remains with the employee, it is not required to persuade the trier of fact that its decision was actually motivated by the reason given. If the employer satisfies its burden, the employee must then persuade the fact finder that the proffered reason for the employment decision is a pretext for intentional discrimination. The employee may satisfy this burden by showing directly that a discriminatory reason, more likely than not, motivated the decision, or indirectly by showing that the proffered reason for the employment decision was not worthy of belief. If such proof is adequately presented, the employee satisfies his or her ultimate burden of demonstrating by a preponderance of the evidence that he or she has been a victim of intentional discrimination.

EXHIBIT 134

Case No. 01-4447 | 3/15/2002

58. The Supreme Court established and later clarified the burden of proof in discrimination cases in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993). Under McDonnell Douglas, Petitioner has the initial burden of proving a prima facie case of racial discrimination. Bryant, 586 So. 2d at 1209.

EXHIBIT 135

Case No. 02-2501 | 7/3/2003

13. The Supreme Court of the United States established in McDonnell-Douglass Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII and which are persuasive in cases such as the one at bar. This analysis was reiterated and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

EXHIBIT 136

Case No. 02-2660 | 11/1/2002

55. Because there is no credible direct evidence of discrimination, Petitioner's claim must be analyzed under the framework established by the United States Supreme Court in McDonnell-Douglass Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). That framework was reaffirmed and refined by the Court in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

EXHIBIT 137

Case No. 02-2746 | 12/11/2002

77. In Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991), the Florida Supreme Court analyzed the types of claims under the Florida Civil Rights Act as follows:

The United States Supreme Court set forth in procedure essential for establishing such claims in McDonnell Douglas Corp v. Green, 41 U.S. 792 (3 S.Ct. 1817, 38 L.Ed. 2d 668 (1973)), which was then revisited in detail in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 Supr. Ct. 207 (1981). Pursuant to the Burdine formula, the employee has the initial burden of establishing a prima facie case of intentional discrimination, which once established raises a presumption that the employer discriminated against the employee. If the presumption arises, the burden shifts to the employer to present sufficient evidence to raise a genuine issue of fact as to whether the employer discriminated against the employee. The employer may do this by stating a legitimate, nondiscriminatory reason for the employment decision; a reason which is clear, reasonably specific, and worthy of credence. Because the employer has the burden of production, not one of persuasion, which remains with the employee, it is not required to persuade the trier of fact that its decision was actually motivated by the reason given. If the employer satisfies the burden, the employee must then persuade the fact finder that the proffered reasons for the employment decision was pretext for intentional discrimination. The employee may satisfy this burden by showing directly that a discriminatory reason more likely than not motivated by the decision, or indirectly by showing that the proffered reasons for the employment decision is not worthy of belief. If such proof is adequately presented, the employee satisfies his other ultimate burden of demonstrating by a preponderance of evidence that he or she has been the victim of intentional discrimination. (Citations omitted.)

she has been the victim of intentional discrimination. (Citations omitted.)

EXHIBIT 138

Case No. 02-2779 | 3/4/2003

14. In the case of alleged discrimination, the charging party has the ultimate burden of proving that the employer intentionally discriminated against him. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981). To meet this burden, Petitioner can produce either direct or circumstantial evidence of discrimination. In this case, no direct evidence was shown. Therefore, the case must be analyzed according to the burden-shifting framework for cases alleging discrimination based on circumstantial evidence. Clark v. Coats & Clark, Inc., 990 F.2d 1217, 1226 (11th Cir. 1993); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

EXHIBIT 139

Case No. 02-3286 | 9/24/2003

18. The Supreme Court of the United States established in McDonnell-Douglass Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII and which are persuasive in cases such as the one at bar. This analysis was reiterated and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

EXHIBIT 140

Case No. 02-3678 | 7/2/2003

20. The Supreme Court of the United States established in McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis in cases alleging disparate treatment discrimination such as the one at bar. This Court reiterated and refined this analysis in St. Marys' Honor Center v. Hicks, 509 U.S. 502 (1993).

EXHIBIT 141

Case No. 02-4522 | 3/4/2004

83. The United States Supreme Court set forth the procedure essential for establishing claims of discrimination in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed 2d 668 (1973), which was then revisited in detail in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981). Pursuant to the Burdine formula, the employee has the initial burden of establishing a prima facie case of intentional discrimination, which, once established, raises a presumption that the employer discriminated against the employee. The pre-eminent case in Florida remains Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991).

EXHIBIT 142

Case No. 03-0137 | 6/24/2003

16. The Supreme Court of the United States established in McDonnell-Douglass Corporation vs. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII and which are persuasive in cases such as the one at bar. This analysis was reiterated and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

EXHIBIT 143

Case No. 03-4708 | 4/22/2004

12. If the petitioner proves a prima facie case, the burden shifts to the Respondent to proffer a legitimate non-discriminatory reason for the actions it took. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L.Ed.2d 207 (1981). The respondent's burden is one of production, not persuasion, as it always remains Petitioner's burden to persuade the fact finder that the proffered reason is a pretext and that the respondent intentionally discriminated against the Petitioner. Burdine, 450 U.S. at 252-256.

EXHIBIT 144

Case No. 03-4848 | 5/28/2004

40. If the petitioner proves a prima facie case, the burden shifts to the respondent to proffer a legitimate non-discriminatory reason for the actions it took. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). Respondent's burden is one of production, not persuasion, as it always remains Petitioner's burden to persuade the fact-finder that the proffered reason is a pretext and that Respondent intentionally discriminated against Petitioner. See Burdine, 450 U.S. at 252-256.

EXHIBIT 145

Case No. 04-0192 | 6/16/2004

24. The Supreme Court of the United States established in McDonnell-Douglass Corporation v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII such as the one at bar. This analysis was reiterated and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

EXHIBIT 146

Case No. 04-1197 | 9/3/2004

71. In cases alleging racial discrimination based on disparate treatment, a petitioner bears the burden of proof established in McDonnell-Douglas v. Green, 411 U.S. 792 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981). Under this model of proof, a petitioner bears the initial burden of establishing a prima facie case of discrimination. If she meets her initial burden, the burden to go forward shifts to the employer to articulate a legitimate, non-discriminatory explanation for the employment action. Dept. of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991). If the employer meets its burden of production, the petitioner must then persuade the court that the employer's proffered reason is a pretext for intentional discrimination.

EXHIBIT 147

Case No. 04-1376 | 12/10/2004

31. Although the Petitioner established a prima facie case of discrimination, the inquiry does not end there. The burden of proof shifted to the Respondent to articulate a legitimate, non-discriminatory reason for the employment action. McDonnell Douglas Corp., 411 U.S. at 802-03; Combs v. Plantation Patterns, 106 F.3d 1519, 1528 (11th Cir. 1997); Brown v. Sybase, Inc., 287 F. Supp. 2d 1330, 1339 (S.D. Fla. 2001). This intermediate burden is "exceedingly light." Meeks v. Computer Assocs. Int'l., 15 F.3d 1013, 1019 (11th Cir. 1994). The Respondent's burden would be satisfied by producing evidence, which, "taken as true, would permit the conclusion that there was a nondiscriminatory reason for the adverse action." St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 509 (1993); Combs, 106 F.3d at 1528 (quoting Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 254-55 (1981)) (the defendant "need not persuade the court that it was actually motivated by the proffered reasons. It is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff."); see also Chapman v. AI Transport, 229 F.3d 1012, 1024 (11th Cir. 2000).

EXHIBIT 148

Case No. 04-1601 | 9/22/2004

12. The United States Supreme Court established, in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII, which is persuasive in the instant case, as reiterated and refined in the case of St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

EXHIBIT 149

Case No. 04-2035 | 10/7/2004

13. The Supreme Court of the United States established in McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII, such as the one at bar. This analysis was reiterated and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

EXHIBIT 150

Case No. 05-0632 | 11/10/2005

42. Absent any direct evidence of discrimination, the Supreme Court established, and later clarified, the burden of proof in disparate treatment cases in McDonnell Douglas v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and again, in the case of St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S. Ct. 2742 (1993).

EXHIBIT 151

Case No. 05-2600 | 11/1/2005

22. The Supreme Court of the United States established, in McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), a three-step analysis to be used in cases alleging discrimination where, as in this case, there is no direct evidence of discrimination.

EXHIBIT 152

Case No. 05-2996 | 10/25/2005

34. As a result, Petitioner's claim must be analyzed under the framework established by the United States Supreme Court in McDonnell Douglass Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and reaffirmed and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993). See also Reeves v. Sanderson Plumbing Products, 530 U.S. 133 (2000).

EXHIBIT 153

Case No. 05-3667 | 1/3/2007

24. In discrimination cases alleging disparate treatment, the complainant generally bears a burden of proof that was established by the United States Supreme Court in McDonnell Douglas v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Under this well established standard of proof, the complainant bears the initial burden of establishing a prima facie case of discrimination. When the complainant makes out a prima facie case, the burden to go forward shifts to the employer to articulate a legitimate, non-discriminatory explanation for the employment action. See Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991). The employer has the burden of production, not persuasion, and need only persuade the finder of fact that the decision was non-discriminatory. Id. The complainant must then come forward with specific evidence demonstrating that the reasons given by the employer are a pretext for discrimination. "The employee must satisfy this burden by showing directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief." Department of Corrections v. Chandler, 582 So. 2d 1186.

EXHIBIT 154

Case No. 06-0413 | 9/14/2006

14. Under the McDonnell Douglas analysis, Petitioner has the burden of establishing by a preponderance of evidence a prima facie case of unlawful employment discrimination. If the prima facie case is established, the burden shifts to Respondent employer to rebut this preliminary showing by producing evidence that the adverse action was taken for some legitimate, non-discriminatory reason. If the employer rebuts the prima facie case, the burden shifts back to Petitioner to show by a preponderance of the evidence that Respondent's articulated reason(s) for its adverse employment decision is pretextual. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

EXHIBIT 155

Case No. 06-2460 | 11/3/2006

38. The shifting burdens of proof in disparate treatment cases are set out both cogently and briefly in Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991):

The United States Supreme Court set forth the procedure essential for establishing such claims in McDonnell-Douglas Corp. v. Green, 411 U.S. 792 93 S. Ct. 1817, 36 L.Ed. 2nd 668 (1973), which was then revisited in detail in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2nd 207 (1981). Pursuant to the Burdine formula the employee has the initial burden of establishing a prima facie case of intentional discrimination, which once established raises a presumption that the employer discriminated against the employee. If the presumption arises, the burden shifts to the employer to present sufficient evidence to raise a genuine issue of fact as to whether the employer discriminated against the employee. The employer may do this by stating a legitimate non-discriminatory reason for the employment decision; a reason which is clear, reasonably specific, and worthy of credence. Because the employer has the burden of production, not one of persuasion, which remains with the employee, it is not required to persuade the trier of fact that its decision was actually motivated by the reason given. If the employer satisfies its burden, the employee must then persuade the fact finder that the proffered reason for the employment decision was pretext for intentional discrimination. The employee may satisfy this burden by showing directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief. If such proof is adequately presented, the employee satisfies his other ultimate burden of demonstrating by a preponderant of evidence that he or she has been the victim of intentional discrimination. (Citation omitted).

Id. at 1185-1186.

EXHIBIT 156

Case No. 07-1972 | 9/28/2007

47. Where a complainant attempts to prove intentional discrimination using circumstantial evidence, the "shifting burden framework established by the [United States] Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981)" is applied. "Under this framework, the [complainant] has the initial burden of establishing a prima facie case of discrimination. If [the complainant] meets that burden, then an inference arises that the challenged action was motivated by a discriminatory intent. The burden then shifts to the employer to 'articulate' a legitimate, non-discriminatory reason for its action.^[21] If the employer successfully articulates such a reason, then the burden shifts back to the [complainant] to show that the proffered reason is really pretext for unlawful discrimination." Schoenfeld, 168 F.3d at 1267 (citations omitted). "The analysis of pretext focuses only on what the decisionmaker, and not anyone else, sincerely believed." Little v. Illinois Department of Revenue, 369 F.3d 1007, 1015 (7th Cir. 2004); see also Schaffner v. Glencoe Park District, 256 F.3d 616, 622 (7th Cir. 2001) ("[T]he Park District stated that it did not promote Schaffner because it believed she was unable to work well with others. Schaffner argues that there is a genuine issue of material fact regarding whether she could work well with others. The district court agreed with her, based on the affidavit of one of her co-workers and the affidavits of several parents whose children had participated in the Kids' Club. However, the issue is not whether Schaffner worked well with others, but whether the Park District honestly believed that she did not. In order to rebut the Park District's articulated reason, Schaffner must present evidence that it did not believe its own assessment. . . . The affidavits of parents and of Schaffner's coworkers simply do not contradict whether the Park District honestly believed Schaffner worked well with others. . . . Because Schaffner did not present any evidence to contradict the Park District's honest, albeit possibly mistaken belief (as opposed to the underlying truth of that belief), she may not overcome the Park District's second articulated reason for not promoting her."); Komet v. Jewel Cos., 874 F.2d 472, 475 (7th Cir. 1989) ("[T]he fact that the employee takes issue in general terms with the employer's overall evaluation is not sufficient to create a triable issue on pretext. As we have recently stated, the employee's 'own self-interested assertions [even where accompanied by the conclusory statements of a co-worker] concerning her abilities are not in themselves sufficient to raise a genuine issue of material fact.'"); and Smith v. Flax, 618 F.2d 1062, 1067 (4th Cir. 1980) ("Smith, of course, testified that he had versatility, and that his competence as an analyst was not confined to the field of logistics. Smith's perception of himself, however, is not relevant. It is the perception of the decision maker which is relevant.").

EXHIBIT 157

Case No. 07-3369 | 3/5/2008

11. The Petitioner has the ultimate burden of proof in this case. The Petitioner must show by a preponderance of evidence that the Respondent Florida State Hospital was the employer for the purposes of Section 760.02(7), Florida Statutes (2007). See § 120.57(1)(j), Fla. Stat. (2007) and St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993). See also McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981) and Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991).

EXHIBIT 158

Case No. 07-3975 | 5/30/2008

47. In cases alleging racial discrimination based on disparate treatment, a petitioner bears the burden of proof established in McDonnell-Douglas v. Green, 411 U.S. 792 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981). Under this model of proof, a petitioner bears the initial burden of establishing a prima facie case of discrimination. If she meets her initial burden, the burden to go forward shifts to the employer to articulate a legitimate, non-discriminatory explanation for the employment action. Dept. of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991). If the employer meets its burden of production, the petitioner must then persuade the court that the employer's proffered reason is a pretext for intentional discrimination.

EXHIBIT 159

Case No. 08-2573 | 2/2/2009

29. The initial burden of proof and duty to go forward herein is upon Petitioner. This type of case is subject to a "shifting burden of proof," only if Petitioner can first establish a prima facie case that some type of disparate treatment has, in fact, occurred. Where Petitioner cannot establish each element of a prima facie case of discrimination, the burden of proof never shifts to the Respondent Employer to articulate a legitimate, non-discriminatory reason or reasons for taking the employment action(s) which Petitioner claims are adverse to him and discriminatory. See Texas Dept. of Comm. Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981); Pace v. Southern Railway System, 701 F.2d 1383, 1391 (11th Cir. 1983).

EXHIBIT 160

Case No. 08-4573 | 2/6/2009

33. The shifting burdens of proof in discrimination cases, pursuant to Chapter 760, Florida Statutes, have been cogently explicated in the seminal case of Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991), which stated:

Pursuant to the [Texas Department of Community Affairs v.] Burdine, [450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981)] formula, the employee has the initial burden of establishing a prima facie case of intentional discrimination, which once established raises a presumption that the employer discriminated against the employee. If the presumption arises, the burden shifts to the employer to present sufficient evidence to raise a genuine issue of fact as to whether the employer discriminated against the employee. The employer may do this by stating a legitimate, nondiscriminatory reason for the employment decision, a reason which is clear, reasonably specific, and worthy of credence. Because the employer has the burden of production, not of persuasion, which remains with the employee, it is not required to persuade the trier of fact that its decision was actually motivated by the reasons given. If the employer satisfied its burden, the employee must then persuade the fact finder that the proffered reason for the employment decision was a pretext for intentional discrimination. The

EXHIBIT 161

Case No. 08-5374 | 5/29/2009

22. The Supreme Court of the United States established in McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII. This analysis was reiterated and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993). See also Zappa v. Wal-Mart Stores, Inc., 1 F. Supp. 2d 1354, 1356 (M.D. Fla. 1998), and Standard v. A.B.E.L. Svcs., Inc., 161 F.2d 1318 (11th Cir. 1998).

EXHIBIT 162

Case No. 08-5487 | 2/24/2009

39. Under the McDonnell analysis, in employment discrimination cases, Petitioner has the burden of establishing by a preponderance of evidence a prima facie case of unlawful discrimination. If the prima facie case is established, the burden shifts to Respondent, as the employer, to rebut this preliminary showing by producing evidence that the adverse action was taken for some legitimate, non-discriminatory reason. If the employer rebuts the prima facie case, the burden shifts back to Petitioner to show by a preponderance of evidence that Respondent's offered reasons for its adverse employment decision were pretextual. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

EXHIBIT 163

Case No. 09-0710 | 10/13/2009

84. The shifting burdens of proof in discrimination cases have been extensively examined in Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991):

Pursuant to the [Texas Department of Community Affairs v.] Burdine, [450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981)] formula, the employee has the initial burden of establishing a prima facie case of intentional discrimination, which once established raises a presumption that the employer discriminated against the employee. If the presumption arises, the burden shifts to the employer to present sufficient evidence to raise a genuine issue of fact as to whether the employer discriminated against the employee. The employer may do this by stating a legitimate, nondiscriminatory reason for the employment decision, a reason which is clear, reasonably specific, and worthy of credence. Because the employer has the burden of production, not of persuasion, which remains with the employee, it is not required to persuade the trier of fact that its decision was actually motivated by the reason given. If the employer satisfied its burden, the employee must then persuade the fact finder that the proffered reason for the employment decision was a pretext for intentional discrimination. The employee may satisfy this burden of showing directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief. If such proof is adequately presented, the employee satisfies his or her ultimate burden of demonstrating by a preponderance of the evidence that he or she has been a victim of intentional discrimination.

EXHIBIT 164

Case No. 10-1176 | 5/11/2010

46. Absent direct or statistical evidence of discrimination, neither of which was offered here, claims of discrimination and retaliation are evaluated using the test for circumstantial evidence, as set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In McDonnell Douglas, 411 U.S. at 792, and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981), the United States Supreme Court first articulated the framework for use by trial courts in evaluating the merits of discrimination claims of disparate treatment based upon circumstantial evidence, including the basic allocation of burdens and order of presentation of proof.

EXHIBIT 165

Case No. 12-1702 | 12/11/2012

41. Petitioner did not produce competent direct evidence of racial discrimination. Therefore, Petitioner may attempt to establish her case through inferential and circumstantial proof. Kline v. Tenn. Valley Auth., 128 F.3d 337, 348 (6th Cir. 1997). Petitioner bears the burden of proof established by the United States Supreme Court in McDonnell Douglas v. Green, 411 U.S. 792 (1973), and Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981). Under this well-established model of proof, the complainant bears the initial burden of establishing a prima facie case of discrimination. When the charging party, i.e., Petitioner, is able to make out a prima facie case, the burden to go forward shifts to the employer to articulate a legitimate, non-discriminatory explanation for the employment action. See Dep't of Corr. v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991) (court discusses shifting burdens of proof in discrimination cases). The employer has the burden of production, not persuasion, and need only persuade the finder of fact that the decision was non-discriminatory. Id. Alexander v. Fulton Cnty., Ga., 207 F.3d 1303 (11th Cir. 2000). The employee must then come forward with specific evidence demonstrating that the reasons given by the employer are a pretext for discrimination. Schoenfeld v. Babbitt, supra at 1267. "The employee must satisfy this burden by showing directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief." Dep't. of Corr. v. Chandler, supra at 1186; Alexander v. Fulton Cnty., Ga., supra. Petitioner has not met this burden.

EXHIBIT 166

Case No. 12-3379 | 3/5/2013

26. Under the McDonnell analysis, in employment discrimination cases, Petitioner has the burden of establishing by a preponderance of evidence a prima facie case of unlawful discrimination. If the prima facie case is established, the burden shifts to the employer to rebut this preliminary showing by producing evidence that the adverse action was taken for some legitimate, non-discriminatory reason. If the employer rebuts the prima facie case, the burden shifts back to Petitioner to show by a preponderance of evidence that the employer's offered reasons for its adverse employment decision were pretextual. See Texas Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

EXHIBIT 167

Case No. 14-2527 | 11/26/2014

80. Usually direct evidence of discrimination is lacking, and one seeking to prove discrimination must rely on circumstantial evidence of discriminatory intent, using the shifting burden of proof pattern established in McDonnell Douglas v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

EXHIBIT 168

Case No. 16-6631 | 3/24/2017

42. "The ultimate burden of persuading the trier of fact that the [employer] intentionally discriminated against the [employee] remains at all times with the [employee]." Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. at 253. In this case, Petitioner failed to meet her burden.

EXHIBIT 201

Case No. 81-0085 | 8/26/1981

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16. The above provisions are similar to federal law contained in the Civil Rights Act of 1964. Where, as here, the Florida Statute is patterned after a federal statute it will generally take the same construction given in the federal courts. 4/ The United States Supreme Court has ruled that a prima facie case of employment discrimination is established by the following: 5/

1. That the applicant belongs to a racial minority.
2. That he applied and was qualified for a job for which the employer was seeking applicants.
3. That despite his qualifications he was rejected.
4. That after his rejection the position remained open and the employer continued to seek applicants from persons of the complainant's qualifications.

18. Petitioner has thus made a prima facie case of discrimination under the above criteria. The burden therefore shifts to the Respondent to articulate some legitimate, nondiscriminatory reason for Petitioner's rejection. 6/

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21. Respondent also seeks to explain Petitioner's rejection by a failure of communication within DOE. Respondent argues that Petitioner's DOA eligibility certificate never reached Mr. Ferrell and that his application was inadvertently disregarded during the second advertisement period. Mistake and failure of communication are not legitimate, nondiscriminatory reasons under the McDonnell Douglas test. 7/

EXHIBIT 202

Case No. 83-1049 | 12/6/1983

A

21. In the case of McDonnell-Douglas Corporation v. Green, 411 U.S. 792, 002 (1973), the Supreme Court of the United States set forth the requirements for a prima facie case of discrimination by requiring the complainant to show:

(1) that he belongs to a protected minority, (2) that he applied and was qualified for a job for which the employer was seeking applications, (3) that he was rejected despite his qualifications, and (4) that the position remained open after his rejection and the employer continued to seek applicants from persons of complainant's qualifications.

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23. The Department has articulated a lawful reason for employing Mierstein, to wit: the requirement to adhere to its rules to promote from within. In addition, the record reflects that Mierstein had significant experience in welding on the type of equipment being used by the Department and in the mechanical repairs to such equipment. Although the Petitioner had exceptional qualifications, both applicants were qualified.

C

24. The burden ultimately rests upon the Petitioner to show that the proffered reasons for the Petitioner's rejection were a pretext. The record reflects that Mierstein had worked for the Department for seven months, was certified eligible in accordance with DOT policy, and that his work was satisfactory to his superiors. At the time, Mierstein was performing the duties of the position of welder. There were reasonable, legitimate, non-discriminatory reasons for the Department's promotion of Mierstein into the position of welder.

EXHIBIT 203

Case No. 84-3605 | 9/30/1985

19. Section 760.10, Florida Statutes, provides, inter alia:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

Florida's employment discrimination statute, Section 760.10, is patterned after Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.). School Board of Leon County v. Hargis, 400 So.2d 103, 108 n. 2 (Fla. 1st DCA 1981).

In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), the Supreme Court established the burden of proof that must be met by a Title VII plaintiff alleging discrimination in hiring.

The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

411 U.S. at 802

If the complainant proves a prima facie case, the burden then shifts to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection. If the employer carries this burden, the complainant must prove that the reason given by the employer is merely a pretext for discrimination.

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EXHIBIT 204

Case No. 92-7529 | 4/26/1993

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12. The suspension was lifted May 10, 1991. But when Petitioner returned to work on the morning of May 10, he found that his department had been eliminated and his employment with Respondent terminated. Pursuant to the latest directive of Mr. Von Drok, Petitioner received full pay through that date, so that the suspension was effectively with pay.

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13. Mr. Von Drok testified that Petitioner was terminated for budgetary reasons. Mr. Von Drok assigned the Code Enforcement responsibilities to the Police Department and the Fire Marshall and Fire Inspector duties to the Fire Department. The Fire Chief has had to assume the Fire Marshall and Fire Inspector duties because only the Fire Chief and Petitioner had the necessary training and certification to perform these duties.

C

16. Likewise, Mr. Von Drok terminated Petitioner for reasons having nothing to do with financial pressures. Respondent terminated Petitioner due to his marital status. If Respondent had not been married to an embezzler, he would not have been terminated. There was no legitimate business reason for the termination of Petitioner.

EXHIBIT 205

Case No. 93-0318 | 10/28/1993

A

14. Petitioner has failed to establish a prima facie case. While she proved that she is a member of a protected class, she was qualified for the position she held in the soft lines department, and an adverse employment decision was taken against her, there is no evidence that persons outside the protected class with equal or lesser qualifications were not discharged or that she was replaced by someone outside the protected class. This conclusion is based on the established facts that only three other full-time employees were subject to possible elimination of their positions and two of them, including a black female, had more seniority and no adverse disciplinary action on their records. The third, a white male, was a fork lift driver, and petitioner had no experience working in that position.

B

15. Assuming arguendo that petitioner proved a prima facie case, respondent has given a legitimate, nondiscriminatory reason for its employment decision, that being a necessary reduction in work force due to a decline in

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sales. As noted in finding of fact 10, the selection of petitioner's position for elimination was not tainted by discriminatory animus. In response to this showing, petitioner failed to prove that respondent's justification was pretextual. Therefore, the petition for relief should be denied.

EXHIBIT 206

Case No. 93-4849 | 12/9/1993

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12. Neither party has provided an analysis of the case law governing this type of dispute or the elements necessary to prove a prima facie case. It would appear, however, that in order to make out a prima facie case of discrimination based upon pregnancy under the foregoing statute, petitioner must show that she was pregnant, that she was qualified for her position, that an adverse employment decision was taken against her, and that the employer treated her differently than other persons who were not pregnant but who were similar in their ability to work. Once petitioner establishes a prima facie case of discrimination, respondent has the responsibility of articulating a legitimate nondiscriminatory reason for its actions. Assuming that burden is satisfied, petitioner may still prevail by proving that respondent's justification was pretextual.

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EXHIBIT 207

Case No. 93-5329 | 6/13/1994

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39. While the Petitioner has made a prima facie showing that he was physically handicapped and was subjected to disciplinary action as an employee, Respondent has articulated legitimate nondiscriminatory reasons for imposing the discipline. In turn, Petitioner has failed to demonstrate that the reasons given for imposing the discipline were not legitimate and were, in fact, a mere pretext for discriminating against Petitioner's physical handicap.

B

EXHIBIT 208

Case No. 93-5330 | 9/8/1994

A

66. The Petitioner bears the burden to show a prima facie case of discrimination. The Petitioner showed he is black and has a handicap. The Petitioner showed he was discharged, and that subsequently his position was filled by a white employee who was not handicapped. With regard to the racial issue, the Petitioner showed that he had performed his duties satisfactorily until he was injured on the job, and was qualified and able to perform his duties. The evidence showed that he was unable to perform the duties which he had performed previous to his injury without assistance which the employer under the then existing law was not obliged to provide.

68. After a Petitioner makes a prima facie case, the Respondent may articulate some legitimate, nondiscriminatory reason for its discharge of the Petitioner. However, it is not necessary that the trier of fact be convinced of Respondent's motives, and the Petitioner may prove by a preponderance of the evidence that the articulated reason was a pretext for discrimination.

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EXHIBIT 209

Case No. 93-5334 | 2/28/1995

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32. The overall burden of persuasion on the ultimate issue of whether the employee can perform the essential functions of the particular job remains with the employee. First, the employee must establish a prima facie case of employment discrimination by establishing that she was denied a position due to her disability even though she was otherwise qualified for the position. If the employee establishes a prima facie case, then the burden of providing evidence to articulate why the disability is relevant to the job qualifications and that the employee's medical limitations prevent her from safely performing the job shifts to the employer.

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39. Petitioner failed to rebut Respondent's evidence by establishing how, with accommodations, she could teach the weekend course within the limitations recommended by her doctor and Respondent's examining physician. The intensive weekend course has long uninterrupted hours and it is difficult to anticipate how Petitioner's need for short blocks of class time and long rest periods could be accommodated without completely altering the fundamental nature of the weekend course.

EXHIBIT 210

Case No. 96-2868 | 8/20/2002

Prima Facie Case and Articulation of Legitimate Reason

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23. The undersigned determined at hearing that, as a result of and through the PERC decision, Petitioner demonstrated a prima facie case of discrimination and Respondent articulated a legitimate reason for the adverse employment action taken against Petitioner.⁵

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26. Respondent determined that Petitioner had committed sexual harassment, which was a first occurrence for her. Respondent terminated Petitioner's employment for a legitimate reason, which was within the range of disciplinary penalties.

C

28. The issue of pretext remains.

EXHIBIT 211

Case No. 96-3323 | 7/24/1997

45. Mr. Doshi has alleged discrimination based on both his age and his race or national origin. As Petitioner, he must bear the ultimate burden of demonstrating that he was a victim of intentional discrimination. Florida State University v. Sondel, 685 So. 2d 923 (Fla. 1st DCA 1996); St. Mary's Honor Center v. Hicks, 113 S.Ct. 2742 (1993). The process of proof generally involves a prima facie case by Petitioner, the Respondent's rebuttal of the inference of discrimination by legitimate, non-discriminatory reasons for its action, and the Petitioner's final burden of proving that the reasons articulated by Respondent were false and that discrimination was the real reason for its action. McDonnell Douglas v. Green, 93 S.Ct. 1817 (1973), St. Marys Honor Center v. Hicks, supra.

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EXHIBIT 212

Case No. 98-3611 | 7/14/2000

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51. Here, Petitioner has met his burden of proving a prima facie case of age and gender discrimination because the record shows that Petitioner was a member of a protected class; he met the minimum qualifications for the position; he was subject to an adverse employment decision; and a person outside the protected class, or a different age, was chosen for the position.

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54. In addition, Respondent has articulated legitimate, nondiscriminatory reasons for its employment decisions.

Respondent demonstrated that Petitioner did not meet all selection criteria and knowledge, skills, and abilities for the position. A person with better qualifications for this position was chosen.

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55. There was no evidence that these actions were a pretext for discrimination or that Respondent was motivated by a discriminatory reason when it rejected Petitioner and selected the more qualified individual.

As to DOAH Case No. 98-3611

EXHIBIT 213

Case No. 00-4433 | 6/12/2001

A

32. Pursuant to this analysis, the plaintiff (Petitioner here) has the initial burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination.

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If the plaintiff succeeds in making a prima facie case, then the burden shifts to the defendant (Respondent here) to articulate some legitimate, non-discriminatory reason for its complained-of conduct. If the defendant carries this burden of rebutting the

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plaintiff's prima facie case, then the plaintiff must demonstrate that the proffered reason was not the true reason but merely a pretext for discrimination. McDonnell Douglas, 411 U.S. at 802-03; Hicks, 509 U.S. at 506-07.

EXHIBIT 214

Case No. 01-2619 | 10/12/2001

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23. The burden of proof rests with Petitioner to show a prima facie case of employment discrimination. After such a

showing by Petitioner, the burden shifts to Respondent to articulate a nondiscriminatory reason for the adverse action.

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If Respondent is successful and provides such a reason, the burden shifts again to Petitioner to show that the proffered reason for adverse action is pre-textual. School Board of Leon County v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981).

EXHIBIT 215

Case No. 01-2904 | 11/28/2001

21. In order to establish a prima facie case of age discrimination under Section 760.10(1)(a), Florida Statutes, the Petitioner must show: that he is a member of a protected class; that he was fully qualified for the job which he held; that he was the subject of an adverse employment decision; and that he was replaced by another person of a different age, with equal or lesser qualifications. See McDonnell Douglas v. Green, 411 U.S.

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792, 93 S.Ct. 1817 (1973). If the Petitioner is able to establish a prima facie case, the burden then shifts to the

Respondent to articulate a legitimate, nondiscriminatory reason

for its employment decision. If the Respondent is able to

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articulate a legitimate reason for the employment action, the Petitioner must then show that the Respondent's actions were merely a pretext for discrimination.

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EXHIBIT 216

Case No. 01-4887 | 3/13/2002

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11. The burden of proof rests with Petitioner to show a prima facie case of employment discrimination. After such a showing by Petitioner, the burden shifts to Respondent to articulate a nondiscriminatory reason for the adverse action.

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If Respondent is successful and provides such a reason, the burden shifts again to Petitioner to show that the proffered reason for adverse action is pretextual. School Board of Leon County v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981).

EXHIBIT 217

Case No. 02-1765 | 12/19/2002

A

39. Once an employee establishes a prima facie case of religious discrimination under Title VII, the burden shifts to the employer to show that it was unable to reasonably accommodate the employee's belief without undue hardship. Weber v. Roadway Exp. Inc., supra, (emphasis supplied). While Title VII does not mandate that an employer accommodate what amounts to an employee's purely personal preference as to religious belief or practice, the belief need not be acceptable, logical, consistent, or comprehensible to others. EEOC v. Union Independiente De La Autoridad De Acueduclos Y Alcontariallados De Puerto Rico, 279 F. 3d 49 (1st Cir. P.R. 2002). To be a "religion" within the meaning of Title VII, an employee's belief system need not have a concept of a God, supreme being, or afterlife, or derive from any outside source; purely moral and ethical beliefs can be religious as long as they are held with the strength and sincerity of religious convictions. EEOC v. Union Independiente De La Autoridad De Acueduclos Y Alcontariallados De Puerto Rico, supra; Peterson v. Wilmur Communications, Inc., 205 F. Supp. 2d 1014 (E.D. Wis. 2002). Membership in an authorized church or subscription to its full menu of orthodox beliefs is also unnecessary. Seshadri v. Kasraian, 130 F. 3d 798 (7th Cir. Wis. 1997).

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50. Thus, Petitioner has demonstrated that a reasonable accommodation was available, and that Respondent did not demonstrate such an accommodation constituted an undue hardship.

EXHIBIT 218

Case No. 03-0048 | 9/22/2003

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34. If the employee succeeds in proving a prima facie case, the burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the discharge of the employee. Should the employer meet this burden, the employee must then prove by a preponderance of evidence that the legitimate reasons offered were a pretext for the employment action and that, therefore, the real reason was grounded in discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

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EXHIBIT 219

Case No. 04-1051 | 7/9/2004

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12. This analysis illustrates that a petitioner has the burden of establishing, by a preponderance of evidence, a prima facie case of discrimination. If that prima facie case is

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established, the respondent must articulate a legitimate, non-discriminatory reason for the action taken. The burden then

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shifts back to the petitioner to go forward with evidence to demonstrate that the offered reason is merely a pretext for unlawful discrimination. The Supreme Court stated in Hicks,

before finding discrimination in that case, that:

[T]he fact finder must believe the plaintiff's explanation of intentional discrimination.

509 U.S. at 519.

EXHIBIT 220

Case No. 04-2033 | 6/7/2005

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76. Accordingly, Petitioner must prove the following in order to establish a prima facie case of handicap discrimination:

- A. She is handicapped within the meaning of the Florida Civil Rights Act;
- B. She was otherwise qualified for her job, with or without reasonable accommodation; and
- C. She was terminated solely by reason of her handicap.

Hilburn v. Murata Electronics North America, Inc., 181 F.3d 1220 (11th Cir. 1999); Gordon v. E.L. Hanuin & Assoc., Inc., 100 F.3d 907 (11th Cir. 1999); and Brand v. Florida Power Corporation, 633 So. 2d 504 (Fla. 1st DCA 1994).

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87. Respondent gave as its reason for terminating Petitioner, that she could not perform the PAT. The reason is not clearly pretextual. That was the prime reason Respondent

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chose to terminate Petitioner, but the termination letter also stated, "This test is specifically designed to assess one's ability to perform essential functions of your position which are physical in nature," and "detention officers must be able to carry out their duties in a manner which safeguards the safety and welfare of the inmate population as well as employees." Respondent was justified in terminating Petitioner for the permissible, non-discriminatory, reason that it appeared that she was permanently (not temporarily) disabled from performing at least two of the essential functions of her job duties which the PAT was designed to test: rapid responses and controlling prisoners. Moreover, at best, it was only possible she could attempt the PAT as of October 2003, and at worst, that she could only be re-evaluated or begin training for the PAT in October 2003. (See Findings of Fact 43, 55, and 58.) Petitioner concedes that even in 2005, she is unsure that she can pass the PAT.

EXHIBIT 221

Case No. 05-0094 | 9/13/2005

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11. The burden of proof rests with Petitioner to show a prima facie case of employment discrimination. After such a

showing by Petitioner, the burden shifts to Respondent to articulate a nondiscriminatory reason for the adverse action.

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If Respondent is successful and provides such a reason, the burden shifts again to Petitioner to show that the proffered reason for adverse action is pre-textual. School Board of Leon County v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981).

EXHIBIT 222

Case No. 05-0566 | 8/11/2005

8. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2004). In a proceeding such as this the initial burden is upon the Petitioner to establish a prima facie case of discrimination based upon his age. Once he establishes that prima facie case, then the burden to go forward with evidence shifts to the Respondent to show a legitimate, nondiscriminatory reason for the employment action in question. If the Respondent articulates such a reason the burden to go forward shifts back to the Petitioner to show by preponderance of the evidence that the reason offered by the Respondent is pre-textual and that its true reason is indeed discrimination. McDonnell-Douglas Corporation v. Green, 411 U.S. 798, 801 (1973); Lee v. GTE Florida, 223 F.3d 1249, 1253 (11th Cir. 2000).

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EXHIBIT 223

Case No. 07-2655 | 11/2/2007

17. To be eligible for relief based on a claim of handicap discrimination, a petitioner must satisfy the same evidentiary burdens demanded by similar statutes addressing claims of employment discrimination. See Earl v. Mervyns, Inc., 207 F.3d 1361, 1365 (11th Cir. 2000); Hilburn v. Murata Elecs. North America, Inc., 181 F.3d 1220, 1226 (11th Cir. 1999). The burden-shifting analysis of Title VII employment discrimination claims is applicable to claims based on handicap discrimination. Earl, 207 F.3d at 1365. The petitioner has the burden to establish a prima facie case of discrimination. Once a prima facie case of discrimination is established, the burden shifts to the employer to articulate a nondiscriminatory reason for the adverse employment action. If the employer articulates a nondiscriminatory reason for its action, the burden shifts back to the petitioner to establish that the reasons articulated by the employer were pretextual. The petitioner bears the ultimate burden of establishing that the employer discriminated against her. See Cleveland v. Home Shopping Network, Inc., 369 F.3d 1189, 1193 (11th Cir. 2004).

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EXHIBIT 224

Case No. 08-4556 | 2/13/2009

28. Citing Cleveland v. Home Shopping Network, Inc., 369 F.3d 1189, 1193 (11th Cir. 2004), the court in St. Johns explained that in handicap or disability discrimination cases:

A

Once the claimant demonstrates a prima facie case, and the employer responds with a non-discriminatory reason, the inference of discrimination is eliminated, and the McDonnell Douglas framework disappears.

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The plaintiff bears the ultimate burden of proving that the defendant intentionally discriminated against her because of her disability.

973 So. 2d 535 at 543.

EXHIBIT 225

Case No. 09-0092 | 5/22/2009

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32. Under McDonnell Douglas Corp v. Green, 411 U.S. 792, 802-805 (1973), an employment discrimination case based on circumstantial evidence involves the following burden-shifting analysis: (a) the employee must first establish a prima facie case of discrimination; (b) the employer may then rebut the prima facie case by articulating a legitimate, nondiscriminatory reason for the employment action in question; and (c) the employee then bears the ultimate burden of persuasion to establish that the employer's proffered reason for the action taken is merely a pretext for discrimination.

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EXHIBIT 226

Case No. 14-2617 | 4/29/2015

40. Under the shifting burden pattern developed in McDonnell Douglas:

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First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to "articulate some legitimate, nondiscriminatory reason" for its action.

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C

Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to prove by a preponderance that the legitimate reasons asserted by [Respondent] are in fact mere pretext. U.S. Dep't of Hous. and Urban Dev. v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990) (housing discrimination claim); accord Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 22 (Fla. 3d DCA 2009) (gender discrimination claim) ("Under the McDonnell Douglas framework, a plaintiff must first establish, by a preponderance of the evidence, a prima facie case of discrimination.").

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