

# **FIFTH CIRCUIT UPDATE**

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# **WILLIAM C. MURLEY**

## **Employment**

- 6/05 – Present      **Raytheon Company** – Dallas, TX  
Senior Counsel, Labor and Employment
- 10/98 – 4/05      **Little Mendelson, P.C.** – Dallas, TX  
Shareholder/Associate
- 8/97 – 8/98      **Law Clerk to Hon. John H. McBryde**  
**U.S. District Court, Northern District of Texas** – Fort  
Worth, TX

## **Education**

**Southern Methodist University** – J.D., 1997

**University of Michigan** – B.A in Political Science, 1992

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**2009 FIFTH CIRCUIT  
EMPLOYMENT LAW CASE  
UPDATE**

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*Jacqueline Johnson Lichty*<sup>†</sup>

**I. SCOPE/INTRODUCTION**

This paper highlights some of the significant labor and employment cases decided by the U.S. Court of Appeals for the Fifth Circuit during the past year.

**A. DISCRIMINATION &  
RETALIATION**

**Title VII – Section 1981 – Race  
Discrimination – Production (Sales)  
Requirements**

*(Unpublished) Taylor v. Peerless Indus.  
Inc.*, 08-20216 (5th Cir. March 30, 2009)

Darrell Taylor (African-American male) was hired as a district sales representative for Peerless Industries in the fall of 2001. He received an award in 2002 for being the top salesperson in 2002; he had exceeded his sales quota by 29.2% and increased sales in his district by 58.1%. In January 2003, Taylor was two days late in providing his supervisor with a 2003 sales plan. Taylor's supervisor was also dissatisfied with the sales plan Taylor submitted. Later in 2003,

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Taylor's management identified additional performance problems, which ultimately led to the termination of his employment in May 2003. At that time, Taylor was ahead of his sales quota and ranked either first or second in sales during the prior four-month period. Taylor was replaced with a white male. Taylor pursued a wrongful termination action alleging race discrimination under Title VII and 42 U.S.C. § 1981. The district court granted summary judgment for Peerless. The Fifth Circuit affirmed.

Taylor asserted that his superior sales performance demonstrated that Peerless's stated reason for terminating his employment was pretext for race discrimination. Peerless argued that despite Taylor's sales numbers, it terminated his employment because he neglected to comply with management's directives concerning how he was to perform his job and that this was causing him to be ineffective in the field.

More specifically, with regard to the issue of pretext, Peerless considered several criteria in addition to recorded sales in assessing sales performance, such as: the frequency with which a salesperson called on customers; the ability to generate new business; use of the customer management database; and his almost non-existent communication with management. Taylor's superior sales numbers alone were insufficient to create a fact issue as to pretext because of the significance of the alleged performance deficiencies and the fact that Taylor had failed to submit evidence to rebut most of those allegations.

Because Taylor failed to create a genuine issue of material fact as to whether his employer's stated reason for the termination decision was false and pretext for discrimination, or as to whether his race was