

Employer Lessons From Chipotle's Multiplaintiff Jury Trials, *Law360*, by Ellen Storch

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Chipotle was able to get two plaintiffs' claims dismissed on summary judgment and five are proceeding to trial before a jury. The case is instructive for employers because it shows how slightly improved human resources practices can allow employers to avoid liability for alleged discrimination. If any of the plaintiffs succeed, Chipotle could be liable for back pay, front pay, lost benefits, emotional distress damages, and the plaintiffs' attorneys' fees and costs. Chipotle could also face a hefty punitive damages award, which is typically not covered by any liability insurance. Whether it wins or loses, Chipotle's own legal fees will be significant, especially because the court ordered one jury trial for three plaintiffs and a second jury trial in April for the remaining two.

Why is Chipotle Instructive for Employers?

As with most recent employment discrimination cases, there is no "smoking gun" in the Chipotle case. There were no overtly sexist policies, and only a handful of potentially discriminatory remarks. Rather, the evidence of discriminatory animus is far more subtle, but just as important for employers to understand.

For the five plaintiffs whose cases survived Chipotle's motion for summary judgment, the court found an issue of fact as to whether Chipotle's reasons for the terminations were a pretext for gender discrimination. For the two plaintiffs whose claims were dismissed, the court found that Chipotle's reasons for the terminations were legitimate and nondiscriminatory. Several themes emerge from the court's 88-page summary judgment decision and its exhaustive analysis of the circumstances of each plaintiff's termination. The decision provides a roadmap for how the same employer can manage terminations to avoid liability, and mismanage terminations — risking the incurrence of significant liability at the hands of a jury.

Following are lessons culled from the case, on when and how to terminate employees in order to minimize the likelihood of potential liability for discrimination.