

Moving for Judgment as a Matter of Law: How Specific Must You Be?

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The First Circuit recently reminded litigants what is or, perhaps, is not, required to preserve the right to file a renewed judgment as a matter of law. Under Federal Rule of Civil Procedure 50(a), before the case is submitted to the jury, a party may move for judgment as a matter of law to argue that no reasonable jury could find for the other side on an issue. The motion may be renewed under Rule 50(b) after an adverse jury finding. In *Gonzalez-Bermudez v. Abbott Laboratories P.R., Inc.*, an employee sued her employer and direct supervisor for age discrimination and retaliation. After a six-day trial, the jury found for the employee. The trial court denied the employer's motions for judgment as a matter of law, which argued that the employee's comparator evidence was insufficient to establish discrimination. On appeal, the employee argued the employer had failed to preserve its challenge to the sufficiency of the evidence on her discrimination claim because the employer's Rule 50(a) motion argued only that there was "no direct evidence of discrimination" and not "a scintilla of evidence" that the elimination of the employee's position was associated with any "lies," and did not specifically mention and refute comparator evidence relied on by the employee. The First Circuit rejected this argument. The employer had indisputably filed a timely Rule 50(a) motion at the close of the evidence, as was required to preserve fully the ability to press a renewed motion for judgment as a matter of law. The motion had specifically argued there was no evidence to support the discrimination claim. The court concluded that more specificity or technical precision is generally not required; otherwise, a motion that is typically made while the jury awaits instructions "would necessarily turn into lengthy analyses of every possible piece of evidence in the other party's possible favor." The court observed that the Rule 50(b) motion had specifically pointed out the insufficiency of the employee's comparator evidence and that the record reflected that the employee was not prejudiced by the purported lack of precision in the first motion. The First Circuit also specifically considered that the trial court itself had told counsel to make its Rule 50(a) motion "very short" because the court was already familiar with the evidence, and was neither surprised nor found waiver when the employer later filed its Rule 50(b) motion. Ultimately, not only was the issue preserved, but the appellate court agreed with the employer and reversed the jury verdict on age

discrimination because there was insufficient evidence in the record. **Tips:**

- You must timely move for judgment as a matter of law before the case is submitted to a jury in order to preserve your renewed motion after an adverse jury verdict.
- As always, know your jurisdiction's rules on preserving arguments. Generally, a Rule 50(a) motion should raise your arguments regarding the sufficiency of the evidence, but need not address every single piece of evidence that could possibly support the other side's claim, particularly where doing so would contravene the trial court's instructions. A Rule 50(b) motion renewed after the jury's verdict, on the other hand, should make precise arguments and point specifically to the insufficiency of the evidence in order to properly present the issues to the trial court and preserve them for appeal.

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