

CASES APPLYING THE OLD PRIMA FACIE FRAMEWORK

CASES	PRIMA FACIE ELEMENTS	SEPARATE CAUSE OF ACTION
<i>Patterson v. Walgreen Co.</i> , 727 F. App'x 581, 585 (11th Cir. 2018).	Former Three-Element Test	Yes
<i>Stanley, v. ExpressJet Airlines, Inc.</i> , No. 16-cv-12884, 2018 WL 6435888, at *7 (E.D. Mich. Dec. 7, 2018).	Former Three-Element Test	Yes
<i>Angelini v. U.S. Facilities, Inc.</i> , No. 17-4133, 2018 WL 3155995, at *8 (E.D. Pa. June 27, 2018).	Former Three-Element Test	Yes
<i>Passmore v. 21st Century Oncology, LLC</i> , No. 3:16-cv-1094-J-34PDB, 2018 WL 1738715, at *3 (M.D. Fla. Apr. 11, 2018).	Former Three-Element Test	Yes
<i>Mohamed v. 1st Class Staffing, LLC</i> , 286 F. Supp. 3d 884, 901 (S.D. Ohio 2017).	Former Three-Element Test	Yes
<i>Camara v. Epps Air Serv., Inc.</i> , 292 F. Supp. 3d 1314, 1326 (N.D. Ga. 2017).	Former Three-Element Test	Yes
<i>Mereigh v. N.Y. & Presbyterian Hosp.</i> , No. 16-CV-5583 (KBF), 2017 WL 5195236, at *5 (S.D.N.Y. Nov. 9, 2017).	Former Three-Element Test	Yes

<i>Christmon v. B&B Airparts, Inc.</i> , No. 16-2341, 2017 WL 3781833, at *3 (D. Kan. Aug. 31, 2017), <i>aff'd</i> , 735 F. App'x 510 (10th Cir. 2018).	Former Three-Element Test	Yes
<i>Dantzler v. Acts Ret. Life Cmtys., Inc.</i> , No. 16-1961, 2017 WL 3617106, at *4 (E.D. Pa. Aug. 23, 2017).	Former Three-Element Test	Yes
<i>Chavis v. Wal-Mart Stores, Inc.</i> , 265 F. Supp. 3d 391, 398 (S.D.N.Y. 2017).	Former Three-Element Test	Yes
<i>Tabura v. Kellogg USA, Inc.</i> , 194 F. Supp. 3d 1188, 1200 (D. Utah 2016), <i>rev'd and remanded</i> , 880 F.3d 544 (10th Cir. 2018).	Former Three-Element Test	Yes
<i>Sowell v. RAV Investigative & Sec. Servs., Ltd.</i> , No. 15-03657, 2016 WL 3014881, at *2 (E.D. Pa. May 26, 2016).	Former Three-Element Test	Yes
<i>Mathis v. Christian Heating & Air Conditioning, Inc.</i> , 158 F. Supp. 3d 317, 329 (E.D. Pa. 2016).	Former Three-Element Test	Yes
<i>Mindrup v. Goodman Networks, Inc.</i> , No. 4:14-CV-157, 2015 WL 5996362, at *5 & n.3 (E.D. Tex. Oct. 14, 2015).	Former Three-Element Test, Divided into Four Elements	Yes
<i>Zamora v. Gainesville City Sch. Dist.</i> , No. 2:14-CV-00021-WCO-JCF, 2015 WL 12852321, at *1 (N.D. Ga. Aug. 26, 2015).	Former Three-Element Test	Yes

<i>Robinson v. CVS Pharmacy, Inc.</i> , No. CV 15-282-CBM-KSx, 2017 WL 2634457, at *1 (C.D. Cal. June 12, 2017).	Former Three-Element Test	Unclear
<i>Equal Opportunity Emp't Comm'n v. United Health Programs of Am., Inc.</i> , 213 F. Supp. 3d 377, 422 (E.D.N.Y. 2016).	Former Three-Element Test	Unclear
<i>Basheeruddin v. Advocate Health & Hosps. Corp.</i> , No. 15-cv-4131, 2016 WL 3520160, at *4 (N.D. Ill. June 27, 2016).	Former Three-Element Test	Unclear
<i>Zamora v. Gainesville City Sch. Dist.</i> , No. 2:14-CV-00021-WCO-JCF, 2015 WL 12851549, at *4 (N.D. Ga. June 22, 2015), <i>report and recommendation adopted</i> , No. 2:14-CV-00021-WCO-JCF, 2015 WL 12852321 (N.D. Ga. Aug. 26, 2015).	Former Three-Element Test	Unclear
<i>Tabura v. Kellogg USA</i> , 880 F.3d 544, 549 (10th Cir. 2018).	Former Three-Element Test	No
<i>Nunn v. City of Huntsville Ala.</i> , No. 5:14-CV-2488-MHH, 2018 WL 1509375, at *7 (N.D. Ala. Mar. 27, 2018).	Former Three-Element Test	No
<i>Brennan v. Deluxe Corp.</i> , 361 F. Supp. 3d 494, 505 (D. Md. 2019)	Former Three-Element Test	Yes
<i>Redmon v. Flexsol Packaging Corp.</i> , No. 519CV00124K DBDSC, 2020 WL 967619,	Former Three-Element Test	Yes

at *6 (W.D.N.C. Feb. 27, 2020)		
<i>Brennan v. Deluxe Corp.</i> , No. CV ELH-18-2119, 2021 WL 2155004, at *12 (D. Md. May 27, 2021)	Former Three-Element Test	Yes
<i>Groff v. DeJoy</i> , No. CV 19-1879, 2021 WL 1264030, at *1 (E.D. Pa. Apr. 6, 2021)	Former Three-Element Test	Yes
<i>EEOC v. Publix Super Markets, Inc.</i> , 481 F. Supp. 3d 684, 692 (M.D. Tenn. 2020)	Former Three-Element Test	Unclear
<i>Horsey v. ADT LLC</i> , No. 517CV1356GTSML, 2020 WL 554390, at *8 (N.D.N.Y. Feb. 4, 2020)	Former Three-Element Test	Unclear
<i>Hussaini v. G4S Secure Sols. (USA) Inc.</i> , 379 F. Supp. 3d 679, 683 (N.D. Ill. 2019)	Former Three-Element Test	Unclear
<i>EEOC v. Walmart Stores E. LP</i> , No. 18-CV-804-BBC, 2020 WL 247462, at *5 (W.D. Wis. Jan. 16, 2020)	Former Three-Element Test	Unclear – likely no.
<i>Jean-Pierre v. Naples Cmty. Hosp., Inc.</i> , 817 F. App'x 822, 826 (11th Cir. 2020)	Former Three-Element Test	No
<i>Stanley v. ExpressJet Airlines, Inc.</i> , 356 F. Supp. 3d 667, 679 (E.D. Mich. 2018)	Former Three-Element Test	No.

**CASES MODIFYING THE OLD PRIMA FACIE FRAMEWORK BUT MAINTAINING
A SEPARATE CAUSE OF ACTION**

Cases	Prima Facie Elements	Separate Cause of Action
<i>Abeles v. Metro. Wash. Airports Auth.</i> , 676 F. App'x 170, 176 (4th Cir. 2017).	Modified Two-Element Test	Yes
<i>Hittle v. City of Stockton</i> , No. 2:12-cv-00766-TLN-KJN, 2018 WL 1367451, at *8-13 (E.D. Cal. Mar. 16, 2018).	Modified Two-Element Test	Yes
<i>Jackson v. NTN Driveshaft, Inc.</i> , No. 1:15-cv-01321-RLY-MPB, 2017 WL 1927694, at *1 (S.D. Ind. May 10, 2017).	Modified Two-Element Test	Yes
<i>Equal Emp't Opportunity Comm'n v. Triangle Catering, LLC</i> , No. 5:15-CV-00016-FL, 2017 WL 818261, at *8 (E.D.N.C. Mar. 1, 2017).	Modified Two-Element Test	Yes
<i>Schwengel v. Elite Prot. & Sec., Ltd.</i> , No. 11 C 8712, 2015 WL 7753064, at *5 (N.D. Ill. Dec. 2, 2015).	Modified Two-Element Test	Yes
<i>Equal Emp't Opportunity Comm'n v. Jetstream Ground Servs., Inc.</i> , 134 F. Supp. 3d 1298, 1318 (D. Colo. 2015).	Modified Two-Element Test	Yes
<i>Webster v. Dollar Gen., Inc.</i> , 197 F. Supp. 3d 692, 702 (D.N.J. 2016).	Modified Two-Element Test	Unclear

<p><i>Ross v. Rockwell Automation</i>, No. 5:14-cv-1886, 2015 WL 3970128, at *2 (N.D. Ohio June 30, 2015), <i>aff'd</i>, No. 15-3827, 2017 WL 3185183 (6th Cir. May 3, 2017).</p>	<p>Modified Test Based on <i>Abercrombie</i></p>	<p>Unclear</p>
<p><i>Dykzeul v. Charter Commc'ns, Inc.</i>, No. CV1805826DSFGJSX, 2019 WL 8198218, at *3 (C.D. Cal. Nov. 18, 2019)</p>	<p>Modified Two-Element Test</p>	<p>Yes</p>
<p><i>Ramseur v. Concentrix CVG Customer Mgmt. Grp. Inc.</i>, 467 F. Supp. 3d 316, 326 (W.D.N.C. 2020)</p>	<p>Modified Two-Element Test</p>	<p>Yes</p>
<p><i>EEOC v. JBS USA, LLC</i>, 481 F. Supp. 3d 1204, 1218 (D. Colo. 2020)</p>	<p>Modified Two-Element Test</p>	<p>Unclear</p>

CASES CORRECTLY (OR NEARLY CORRECTLY) APPLYING ABERCROMBIE

CASES	PRIMA FACIE ELEMENTS	SEPARATE CAUSE OF ACTION
<i>Equal Emp't Opportunity Comm'n v. JBS USA, LLC</i> , 339 F. Supp. 3d 1135, 1175 (D. Colo. 2018).	Appears to Approve Modified Two-Element Test	No
<i>Walker v. Indian River Transp. Co.</i> , No. 8:15-cv-2246-T-27TGW, 2017 WL 388921, at *2-3 (M.D. Fla. Jan. 27, 2017).	Modified Two-Element Test	No
<i>Summers v. Whitis</i> , No. 4:15-cv-00093-RLY-DML, 2016 WL 7242483, at *4 (S.D. Ind. Dec. 15, 2016).	Modified Two-Element Test	No
<i>Bailey v. Metro Ambulance Servs., Inc.</i> , 992 F.3d 1265, 1275 (11th Cir. 2021)	Direct Method - Modified Two-Element Test	No
<i>Carter v. Transp. Workers Union of Am. Loc. 556</i> , 353 F. Supp. 3d 556, 577 (N.D. Tex. 2019)	Direct Method - Modified Two-Element Test	No
<i>Kluge v. Brownsburg Cmty. Sch. Corp.</i> , 432 F. Supp. 3d 823, 845 (S.D. Ind. 2020)	Direct Method - Modified Two-Element Test	No
<i>Dalberiste v. GLE Assocs., Inc.</i> , 814 F. App'x 495, 497 (11th Cir. 2020)	Direct Method - Modified Two-Element Test	No
<i>Lowman v. NVI LLC</i> , 821 F. App'x 29, 31 (2d Cir. 2020)	Direct Method - Modified <i>Motive</i> Two-Element Test	No

<i>Refat v. Franklin Financial Services Corp.</i> , No. 1:19-CV-1507, 2021 WL 2588789, at *3 (M.D. Pa. June 24, 2021)	Indirect Method – <i>McDonnell Douglas</i>	No
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