

# To sue for failure to promote, employee must have actually applied for promotion

When an employee sues his employer, alleging he was denied a promotion because of some form of discrimination, he must at least show that he applied for the promotion. Merely telling his supervisors that he's interested in possible promotion opportunities isn't enough when the employer has a formal application process in place.

**Recent case:** Dermoth, who is of Jamaican ancestry, worked for Time Warner Cable in New York City as a direct sales associate for about five years. He was terminated after he did not return from FMLA leave that he took to recover from extensive dental surgery.

Dermoth sued, alleging that he and other Jamaican direct sales associates were routinely bypassed for promotions to "retention specialist" or "win-back specialist" positions. Those jobs paid significantly more and included regular bonuses.

Time Warner told the court that its records didn't show any actual promotion applications from Dermoth. Although he had told his supervisors that he was generally interested in earning more and being considered for promotion, he never actually applied.

That was enough to kill his lawsuit. The court concluded that since Dermoth didn't even apply, he couldn't argue he had been turned down because of his ancestry. (*Reid v. Time Warner*, ED NY, 2018)

**Final note:** Employers should have a uniform promotion process that includes posting all opportunities in a way that's accessible to all current employees. Then, track each application and keep those documents accessible for later retrieval.