

# Employment Law Monthly - August 2012

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## **Success Through Documented Failure**

By Raquel S. Lord

Though New Jersey employers are all too familiar with the myriad exceptions to the at-will doctrine, in a recent decision, the United States Court of Appeals for the Third Circuit provided some words of comfort for employers concerned about terminating an employee for performance reasons for fear of being the subject of a lawsuit: where "an employee consistently under-performs in a skill-set fairly designated as critical to his job," the employee will be unable to demonstrate that his termination. In *McDonnaugh v. Teva Specialty Pharmaceuticals, LLC*, No. 22-3462, 2012 U.S. App. LEXIS 15423 (July 26, 2012), finding that the plaintiff had failed to meet his burden to demonstrate that his termination was a pretext for racial discrimination, the Third Circuit affirmed the District Court's grant of summary judgment in favor of Teva Specialty Pharmaceuticals and dismissal of plaintiff's claims in their entirety.