

**Rosemarie COLE, Plaintiff–Appellant,**

v.

**The PERMANENTE MEDICAL  
GROUP, INC., a California cor-  
poration, Defendant–Appellee,**

and

**Kaiser Permanente Medical Group,  
Inc., a California corporation,  
Defendant.**

**No. 13–15952.**

United States Court of Appeals,  
Ninth Circuit.

Submitted June 11, 2015.\*

Filed July 1, 2015.

Steven M. Fink, Esquire, Mesirow &  
Fink, San Jose, CA, for Plaintiff–Appel-  
lant.

David Bruce Anderson, Marion’s Inn  
LLP, Oakland, CA, for Defendant–Appel-  
lee.

Before: CHRISTEN and WATFORD,  
Circuit Judges, and ROTHSTEIN,\*\*  
Senior District Judge.

**MEMORANDUM \*\*\***

Rosemarie Cole appeals the district court’s order granting summary judgment in favor of The Permanente Medical Group on Cole’s claim that Permanente terminat- ed her employment in violation of § 510 of the Employee Retirement Income Security

Act (ERISA). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

ERISA § 510 provides that “[i]t shall be unlawful for any person to discharge . . . a participant [in an employee benefit plan] . . . for the purpose of interfering with the attainment of any right to which such partic- ipant may become entitled under the plan.” 29 U.S.C. § 1140. The district court concluded that Cole established a prima facie case of discrimination under § 510 because she was discharged 18 months before she would have been entit- led to additional benefits under her pen- sion plan. Even if she established a prima facie case, Cole’s claim fails because Per- manente articulated a legitimate, nondis- criminatory reason for terminating Cole. *See Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 456–57 (9th Cir.1995) (applying bur- den shifting analysis applicable to Title VII and ADEA claims to claim brought under § 510 of ERISA). Cole was termi- nated because she knowingly violated Per- manente’s confidentiality policy by access- ing her then-husband’s medical records 12 times and another person’s records more than once. Cole did not present any evi- dence that showed Permanente’s articul- ated motive for terminating her was pretext for a discriminatory motive. *See id.* Cole did not present evidence that the person who made the decision to terminate her employment was aware that the termi- nation would reduce Cole’s pension bene- fits or disqualify Cole from any benefits.

**AFFIRMED.**

Court for the Western District of Washington,  
sitting by designation.

\*\*\* This disposition is not appropriate for publi- cation and is not precedent except as provid- ed by 9th Cir. R. 36–3.

\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

\*\* The Honorable Barbara Jacobs Rothstein, Senior District Judge for the U.S. District