

# From the courtroom: Termination lawsuit lessons

A termination lawsuit can be avoided with compelling, clear and well-documented details to back up your decision. Take these lessons from real-life termination cases as reminders and tips for the next time you find yourself building a case to fire.

## **Solid reasons for termination? Fire away!**

If you have compelling reasons to terminate someone and have carefully documented them, there's really no reason to fear pulling the firing trigger. Just be sure to treat all similarly situated employees the same way.

Recent case: Theodore was hired as an assistant professor in the Business Department at SUNY Buffalo State. He had an initial three-year appointment, with the expectation that he would win new appointments if he performed well.

He earned several teaching awards and his contracts were twice renewed. Eventually, he earned academic tenure and, with it, protection from discharge under most circumstances.

Then Theodore was accused of plagiarism. The university convened a committee to investigate. It concluded that he violated ethical standards by failing to include original sources in his articles and that some of his publications had extensive quotations that weren't properly cited.

It also concluded he submitted articles to multiple publications and failed to obtain approval to conduct research on his subjects. His contract was not renewed.

Theodore sued, alleging various forms of discrimination, including sex and race. He argued to the court that a fellow faculty member, an Asian-American woman, had her contract renewed when he did not.

But the court tossed out his termination lawsuit. It noted that the co-worker had never been charged with plagiarism or any other ethical offense. That meant she wasn't a valid comparison. The university's disciplinary decision, therefore, wasn't tainted by preferential treatment. (Davis v. State University of New York College at Buffalo, WD NY, 2019)

Final note: The university did everything right. It didn't jump to conclusions. It carefully investigated the ethics allegations against Theodore. It then confidently moved forward to discipline him after making sure it wasn't treating him differently than any other assistant professor who was found to have broken the same or similar ethics rules.

## **Carefully document customer complaints if they might be used to justify termination**

If your employees can be terminated because of customer complaints, make sure you have a reliable method for tracking those complaints. Be sure to include as many details as possible. If you give employees an opportunity to respond to complaints, show that, too.

You want to avoid a situation where an employee who has been discharged can argue that you ignored customer complaints for years before suddenly using them to justify a termination.

He and his lawyer will contend you used a complaint as a pretext to fire him for some other, discriminatory reason.

Recent case: Bob worked for a manufacturer of medical supplies and devices for many years. As a commission-based sales rep, he was responsible for marketing and selling the company's surgical instruments, which are used in orthopedic and other medical procedures.

Bob was a good salesman, meeting or exceeding his annual sales quota in 22 of his 25 years with the company.

But sales reps aren't just responsible for sales. They are also required to provide "superior service" to customers. That includes maintaining strong relationships with customers and being present in operating rooms or conducting product training with staff.

While Bob was good at sales, he had decidedly less success in customer service.

Starting in 2011, Bob found himself working under a new regional manager. The new boss received four separate complaints about Bob from large hospitals and medical centers, as well as surgeons and nurses. The manager began keeping detailed notes about the specific complaints.

Some customers refused to work with Bob at all, calling him "rude and obnoxious." Others said he "lacks ethics" and would not be allowed to enter their operating rooms due to "his lack of professionalism."

Bob first received a warning when the manager shared the complaints. Next, when complaints kept coming in, he was placed on a performance improvement plan. A second plan followed after a customer told the supervisor that the company would "be better off with a dead body as a sales rep."

Bob countered that the complaints were unfounded and that certain customers just didn't like him.

The company finally terminated Bob when the complaints didn't stop.

He sued, alleging age discrimination. Essentially, he argued that the real reason he was let go was because the company wanted to replace him with younger sales reps.

He said the old customer complaints had been used as an excuse to fire him.

The court didn't buy Bob's argument and dismissed his termination lawsuit. It cited the fact that Bob's employer had carefully documented each complaint, giving Bob the opportunity to improve.

The court said delaying the discharge wasn't proof that the company was seeking a termination excuse but proof that it valued Bob's sales ability and wanted him to turn around his performance. When he didn't, the employer was free to fire him. (Holly v. Stryker Corporation, ED PA, 2019)

Final note: If you fire an older worker for reasons that go way back, he's likely to argue that you're dredging up old news as an excuse to fire him because of his age.

However, Bob's employer documented it all and showed the court it tried to hold its employee accountable. Old news as an excuse, therefore, didn't work.