

Of good faith and gut instinct: Fire employee who falsely claims discrimination

It's frustrating when an employee continually claims to be the victim of discrimination while internal investigations show that just isn't so. It takes a toll on bosses, who don't want their reputations besmirched. It can harm the whole organization if it develops an undeserved reputation as a workplace where discrimination is pervasive.

But many employers shy away from punishing these kinds of serial complainers. Their fear: That disciplining the employee will lead to a charge of retaliation. They figure they simply have to live with the constant complaints and false accusations.

They don't have to.

If an employer is confident the employee's charges are false, it can terminate the employee. That's true even if you turn out to be wrong—because what matters is your good-faith belief that the employee made up the discrimination claims.

Advice: Run the situation by your attorney first to make sure you have properly investigated the employee's complaints.

Recent case: Eddie McKinney, who is black, worked full time as a speech therapist. Then his employment status changed to part time, and he worked on an as-needed basis. The reason his employer gave for the change: Patients frequently requested another therapist whose performance was considered superior to McKinney's. McKinney didn't like the change. He also took issue with his reassignment to a smaller office, as well as new billing and documentation policies imposed on the staff.

In September 2006, McKinney was terminated for failing to comply with the new policies and for making unjustified accusations of racism against his supervisors.

He sued, alleging discrimination and retaliation.

But the 5th Circuit Court of Appeals said he had no case because McKinney's employer provided two legitimate reasons for his discharge: poor performance and making false accusations against his supervisors.

McKinney argued he never called his supervisors racists, but the court compared the situation to a sexual harassment complaint in which an employee claims someone harassed him, and the employer believes the accused and not the accuser.

As long as the belief is a good-faith one, the employer's action is legitimate and not a pretext for discrimination. (*McKinney v. Bolivar Medical Center*, No. 09-60103, 5th Cir., 2009)

Final note: This case should give employers some confidence that they don't have to become mini courts everytime someone alleges discrimination. If employers couldn't reach good-faith decisions on who is telling the truth and who is not, they would be forced to retain all employees involved.

Conduct a thorough and reasonable investigation, but recognize that at some point—if there is no concrete evidence to support the allegations—it all comes down to who is the more believable employee. You want to find out to the best of your ability who is telling the truth, but you will never get absolute certainty. Don't let that paralyze you.

If you work with your attorneys to come up with a good investigation process, let that process do its job. You may be sued, but chances are you will prevail.