

Applicant has solid work history? That's a legitimate reason for promotion

Sometimes, it's hard to distinguish one applicant from another. That's especially true for unskilled positions. How do you choose? If one of the factors you use is work history, rest assured it is unlikely your choice will be challenged successfully.

Recent case: Janice Nathaniel, whose job title was Park Ranger I, wanted a promotion to Park Ranger II. But her employer instead picked a male applicant who worked part time for the agency, also as a Park Ranger I.

Nathaniel sued, alleging sex discrimination.

The agency countered that it promoted the man for several reasons, including that he had a long and steady employment history. He had worked for his previous employer for nine years, while Nathaniel had never worked for any employer for longer than three years.

The court dismissed Nathaniel's case, reasoning that length of employment was a legitimate reason to prefer the male candidate. (*Nathaniel v. Mississippi Department of Wildlife, Fisheries and Parks*, No. 10-60552, 5th Cir., 2010)

Final notes: Remember that documentation is the key to defending against a hiring, termination or promotion discrimination lawsuit. It will help you show why you made the decision at the time you made it. You can't come up with reasons later. In court, you'll need documentation that was created contemporaneously with the decision.

Documentation doesn't have to be formal. A brief memo for your files is fine, as long as you date it and can retrieve it later if you need to.