

Can setting unrealistic job goals be considered 'discrimination'?

It's smart to set reasonably lofty goals for employees. Then point them in the right direction and shout, "Go get 'em!" But is there a danger in setting those goals too high? One court recently let a jury decide whether a company's higher-than-the-moon goals were discriminatory. And, as we all know, once an employer is pushed off to a jury, it's an instant loss... in time, money and brand damage.

Case in Point: Jeffrey Willnerd was a loan officer at a Nebraska bank for 21 years. He suffered from a voice impairment that affected his speech. His condition gradually worsened to the point where his voice would cut out without notice and he'd have to whisper most of the time. It didn't affect his performance, but the bank worried how customers might react. He never requested an accommodation.

When it came time to set new performance goals for Willnerd, bank execs doubled his overall annual volume of loans from a quota of \$2 million to \$4 million. He was the only branch employee given that quota and, to boot, the \$4 million loan target was greater than the branch has ever generated. The bank also referred home-equity borrowers to another bank employee.

As expected, Willnerd began falling short of this goal. He was given a warning. His production then increased somewhat, but he still was fired about 90 days later. The banks said Willnerd's production was insufficient and they were cutting jobs for economic reasons.

Willnerd filed suit under the Americans with Disabilities Act (ADA), claiming he was discriminated because of his voice condition and was given unreachable goals, then terminated for failing to achieve them. The bank tried to argue that it had clear reasons to terminate—Willnerd failed to reach objective company goals and the economy forced their hand. (*Willnerd v. First Nat'l of Nebraska Inc.*, 8th Cir., 3/13/09).

What happened next and what lessons can be learned?

The court sided with Willnerd, saying "We have previously held that it is permissible for a jury to view the imposition of an unattainable goal as evidence of pretext because a jury may reasonably view the goal or production quota as an effort to set up an employee for failure."

The court took into consideration that the bank's failure to impose "quotas and consequences on underperforming personal bankers." That inequality, the court said, "undercut the bank's argument that it selected Willnerd for termination because of performance concerns." His case was strengthened further by the fact that bank executives' admitted that they discussed Willnerd's voice condition and were concerned about its impact on customers.

3 Lessons Learned Without Going to Court

1. Avoid over-the-moon goals. Never set goals that are so close to the moon that they are out of reach of an employee. Courts look closely at whether or not performance goals are really used to increase productivity or

are set as a pretext to terminate based on discrimination.

2. Follow the “same job, same goals” rule. If you set goals for one employee, look across the organization chart to see who else will be impacted and set those goals for those employees, too. In this case, the court looked at similarly situated employees and wondered why the bank decided to impose radically different quotas on him.

3. Zip up. No employment action should be based on an individual’s protected characteristics, including their disability. The court noted that when the bank discussed Willnerd’s voice impairment during the termination decision, such a discussion could be enough evidence for the jury to make the bank open its vault doors and give Willnerd free reign to take home the loot.