

Don't let bias complaint stop legit discipline

Here's an important reminder for HR professionals handling employee discipline: If the disciplinary process is well under way—and you believe that the proposed discipline is fair, reasonable and based on facts—there's no need to stop the process just because the employee files an internal discrimination complaint.

While the employee may end up suing, chances are you will win.

Courts understand that employees sometimes file discrimination charges to short-circuit discipline. Presented with well-documented examples of poor work or rule breaking, judges usually take the employer's side.

Recent case: Caroline Dellapenna, who was born in China, went to work as the finance manager for a school district. It wasn't long before subordinates complained about Dellapenna's treatment of them and her apparent decision to ignore standard accounting practices.

The school district launched an independent, outside financial audit that examined how the books were being kept. Investigators reviewed financial records and interviewed co-workers and subordinates.

Meanwhile, Dellapenna complained that she was being targeted because she was of Chinese ancestry and origin. Two weeks after she complained, the school district fired her.

She sued, alleging discrimination.

But the court said the timing was irrelevant. In this case, it was clear that the school district began investigating Dellapenna long before she complained, and that no one else who behaved the way she did was treated more favorably. (*Dellapenna v. Tredyffrin/Easttown School District*, No. 11-1394, 3rd Cir., 2011)

Final note: By appointing outside experts to conduct the investigation, the school district showed it was committed to fair and impartial action. Outside investigations are often preferable to internal probes in which many of the individuals involved know each other and may have a bias for or against the employee.