

# Take Off the Rose-Colored Glasses ... and Start Documenting Poor Performance



Managers often want to send their poor performers packing with a Trump-like point of the finger and a hearty “You’re fired.” No advanced warning ... no documentation. But as this new ruling shows, if your paper trail on the employee’s performance is lacking (or inconsistent with reality) you’re setting yourself up for a discrimination lawsuit ...

**Case in Point:** Catherine Eno was 61 when she was laid off from her job as an assistant buyer for a Pennsylvania building supply company. The company claimed she was included in the RIF because she had a “poor work attitude” and lacked tenure.

Eno sued the company under the Age Discrimination in Employment Act (ADEA), arguing that age was the real reason for her termination. She pointed out that a co-worker who was younger but had the same job tenure was not let go. Also, the company couldn’t come up with any written documentation verifying Eno’s alleged poor attitude.

To the contrary, Eno supplied the court with positive written reviews including, “Cathy hit the ground running in eastern and is doing an excellent job for that department.”

The company argued that while her poor performance was not documented, it really was observed to be poor. Plus, the company said it had suffered a 47% drop in business and needed to lay off employees.

This initially seemed acceptable to the court. But the court raised its eyebrows at contradictory reasons given by the company to lay off Eno. While managers wrote positive written evaluations, they back-peddled in oral testimony, saying her work was “marginal” and she was “perceived as difficult to work with.” That left a question of fact for the jury to decide if she was really fired because of her age. ([\*Eno v. Lumbermans Merch. Corp.\*](#) E.D.Pa., 4/18/12)

**Bottom line:** Inconsistency created the liability.

## 3 Lessons Learned ... Without Going to Court

**1. Always document poor performance.** Courts find it fishy when employers fire an employee for “poor performance” without a written record of it. It leaves open the possibility that the firing was for discriminatory reasons—something an employer would not document!

**2. Don’t glow.** If an employee is a poor performer, don’t write up a glowing review. It will come back to bite you, as it did in this case.

**3. Get your business strategies straight.** The court noted that one manager testified that performance was not taken into consideration when deciding on whom to lay off. Yet, another manager said it was. Which one

was lying...or confused? Now, the jury will get to decide the truth