

# OK to fire everyone, then ask them to reapply

Sometimes, it becomes apparent that something has to change in a workplace. When that's the case, firing everyone and having them reapply for their jobs may be a viable approach, if a recent 5th Circuit Court of Appeals decision is any indication.

**Recent case:** A new department head at a hospital wanted to restructure the respiratory therapy department. He asked HR to approve the new system and implement a plan to fire all current respiratory therapists, invite them all to reapply (along with other qualified applicants) and essentially start over.

HR agreed. The therapists were terminated and most reapplied. Each applicant—old and new—was asked the same set of questions and rated on their answers. Those who scored below 24 on a 48-point scale were not rehired.

That included seven therapists of Indian origin, who all sued, alleging national-origin and race bias.

The hospital presented evidence showing that it wasn't just Indian therapists who weren't rehired—their cohort included white and black therapists, too. Plus, many races were represented among those who were rehired.

The court looked at the interview process and found nothing in the questions that reflected bias against Indians. Nor was there any other evidence, other than the employees' perception, that their race played a role. That simply wasn't enough. Their case was dismissed. (*Alexander, et al., v. Lone Star Health Management*, No. 12-10730, 5th Cir., 2013)

**Final note:** If you adopt this approach, do make sure the questions asked are job-related and that there aren't any smoking guns in the end result.

If the therapist workforce had suddenly become heavily dominated by some other specific ethnicity, the result might have been different.