

# Check the validity of reasons behind a supervisor's call for firing

If you're involved in termination decisions, don't always take supervisors' comments at face value. Consider doing your own investigation before taking action. Your goal is to independently verify the information you're receiving from supervisors. Also try to determine if the supervisor has ever shown discriminatory tendencies toward the worker.

As this case shows, your organization won't escape liability for discrimination merely by having a neutral party perform the firing. If an employee can prove that discrimination infected just one piece of the firing decision, you can be liable.

That's why you can't let one bad apple manipulate employment decisions. Remind supervisors that it's their job to make sure discrimination doesn't taint any part of the hiring and firing process, including performance reviews.

**Recent case:** John Cariglia, who was in his 60s, was a successful manager at the Boston branch of Hertz Equipment Rental. The division vice president, who supervised Cariglia's office, denigrated Cariglia because of his age, calling him "over the hill," "not our kind" and someone "who should not be here."

The vice president instigated a series of internal audits against the Boston branch, telling a regional controller to "keep digging" until he found something to "get rid of Cariglia." The audit revealed a financial irregularity, a tax deferment issue that the vice president had actually instructed Cariglia to do.

The vice president sent the "set-up" audit report to senior management, which then fired Cariglia for gross misconduct.

Cariglia sued, alleging age discrimination. A federal appeals court sided with him.

Hertz had argued that Cariglia couldn't win because the ultimate firing decision makers (senior management) had no bias against him. But that doesn't matter, the court said. An organization can be liable for discrimination if a neutral decision maker fires an employee based on information that's tainted by someone else's discriminatory motives.

The court found enough evidence that the VP had influenced the termination process by providing suspect information. (*Cariglia v. Hertz Equipment Rental Corp.*, No. 02-2199, 1st Cir., 2004)

## How to defuse 'secondhand' discrimination

In discrimination cases, courts typically look for discriminatory actions by the "decision maker." But as the case above illustrates, almost anyone who influences the employment decision, even if he or she doesn't have hiring or firing authority, could be labeled a decision maker in the eyes of the court, thus opening you up to a bias lawsuit. To make sure discrimination is weeded out at all levels of your organization, follow these six steps:

1. Establish a firm, anti-discrimination policy, backed by training for all managers, supervisors and employees.

2. Make sure your performance standards are objective and are interpreted that way by your managers.
3. Apply your standards evenhandedly so older workers, minorities and women aren't singled out for punishment of infractions.
4. Assess all personnel actions to ensure you've avoided the above pitfalls.
5. Document all disciplinary action taken, including warnings and suspensions.
6. Put all your rules in writing. That way, they're hard to ignore, and your employees and supervisors are fully aware that your organization stands firmly against discrimination.