

Beware retaliation after employee complains

Watch out if a supervisor suddenly gives a poor performance review to a previously good employee who has recently complained about discrimination.

Unless you can clearly show that the employee's performance was deteriorating, you might be setting yourself up for an otherwise avoidable retaliation lawsuit.

Recent case: Tony worked for Verizon and had good performance reviews. He lodged a race discrimination complaint with HR, which failed to investigate his claim.

Soon after, Tony found himself placed on a performance improvement plan (PIP). No other employee in his position had been placed on a PIP in at least three years, nor had anyone with a lower performance score than Tony's.

While on the PIP, Tony placed No.1 in sales, but the plan was extended for an additional period. Then he was rated poorly on his next review and was terminated.

Tony sued, alleging retaliation.

A jury sided with him and awarded him \$200,000 for emotional distress. Verizon asked for the verdict to be overturned, arguing that it really had fired Tony for poor performance.

The court refused. It said there was enough evidence from which the jury could conclude Tony had been punished for complaining. He had good reviews before, and employees with lower performance scores weren't required to complete performance improvement plans. His performance during the plan was excellent, but he was fired after a sudden poor review. The court said all those factors showed that the real reason behind Tony's termination was retaliation for complaining. (*Campbell v. Cellco Partnership*, No. 10-Civ-9168, SD NY, 2013)

Final note: In a small victory for Verizon, the court did lower the \$200,000 emotional distress verdict to \$125,000. That was only because Tony didn't present any medical evidence that he suffered emotional distress.