

Demoting employees who belong to a protected class

Q. When making demotion decisions—especially those involving employees in protected classes—what factors should an employer take into consideration to avoid legal backlash?

A. You should identify a legitimate business reason for the demotion—one not based on protected status such as race, gender or age—and make sure that it will stand up to scrutiny.

As an example, if you want to demote an employee who has weak supervisory skills from a management to a nonmanagement position, consider whether you have counseled the employee and given him an opportunity to improve. Are there documents to support the decision? Have other employees who had similar performance problems also been demoted?

You should review the employee's personnel file to make sure that performance reviews aren't inconsistent with the decision to demote—such as a comment praising the employee's management skills. If you have not previously counseled the employee, it would be wise to explain in detail the reasons for the demotion and what the employee needs to do to improve. Putting extra time into this employee may save you time and headaches down the road.