

Are you ready to explain each and every promotion decision?

Lawsuits sometimes seem to come out of nowhere. While you can reduce your risk through prevention, you can't eliminate it entirely. That's why you need a backup strategy.

For failure-to-promote lawsuits, that strategy should involve being ready to explain each and every promotion decision with solid business reasons. Timing is everything. The key is to clearly document the rationale for your decision *at the time* you make it—not after a disappointed employee files the lawsuit.

The explanation doesn't have to be elaborate. It's enough to note, for example, that John was promoted because he has seniority, and company rules say seniority is the primary factor in determining who is promoted.

Recent case: Ron Lightsey was a part-time U.S. Postal Service clerk who hoped for a promotion to permanent, full-time status. He noticed that some of the women working alongside him got promotions even though the grapevine said none was in the works.

He sued, alleging sex discrimination. The post office countered that two of the women Lightsey thought had been promoted were still part-time clerks. The third woman had been promoted based on her seniority—which was the only factor the post office considered.

A trial court tossed out the case, and the 11th Circuit Court of Appeals upheld that decision. It said there was no evidence that the post office's stated promotion decision was a pretext for discrimination. (*Lightsey v. Potter*, No. 07-14015, 11th Cir., 2008)