

Retire or get fired? Prepare for lawsuit

Because the choice between being fired or retiring isn't entirely voluntary, a forced retirement is sometimes the legal equivalent of being fired. The employee may be able to sue for alleged discrimination even if she chooses to retire and receives retirement benefits.

Recent case: Martha, who was older than 60, worked as a Medicaid case worker. She also supervised other case workers, reviewing the paperwork they submitted to the state of Texas. She was supposed to verify that the forms were accurate and that any deficiencies had been corrected.

Martha took FMLA leave after being diagnosed with depression and other conditions brought on by menopause.

She soon found her work subject to extra scrutiny. Her supervisors claimed they found errors in the forms she had been reviewing and submitting.

The agency where she worked offered a choice: take early retirement or be fired. She chose retirement.

Then Martha sued, alleging age discrimination. She claimed she had been replaced by a man 15 years younger than her.

The agency argued she had no case because she had voluntarily retired and retiring isn't an adverse employment action.

The court disagreed. It said a number of employer actions can become the basis for a lawsuit. Among them: demotion, reduction in salary, reduced work responsibilities, reassignment to work for a younger and less experienced supervisor, badgering, humiliation, harassment—and encouraging resignation and offering early retirement. The court then reasoned that voluntarily retiring in lieu of discharge fit into that list of adverse actions and allowed her age discrimination lawsuit to move forward. (*Cruz v. Texas Health and Human Services*, SD TX, 2017)

Final note: Before suggesting someone retire rather than face discharge, consult your attorney about offering a severance payment in exchange for a release of claims.