

Ultimate lawsuit preventive: Proof of poor performance

Employers that track poor performance and can clearly justify reasons for discharge rarely lose lawsuits. That's because, unless there is solid proof of bias, poor performance will always trump spurious arguments about alleged discrimination.

Recent case: When he was fired, Henry, who is Haitian-American, tried to turn a single off-hand comment into a national origin discrimination lawsuit.

But the employer had carefully catalogued all the ways Henry's performance was subpar at each step of the way. For example, the employer explained to the court that Henry was required to make 100 calls per day and close \$50,000 in loans per month during his first five months as a loan officer. Records showed he did not meet those requirements.

That defeated Henry's argument that the employer discriminated when his supervisor made a comment about the use of voodoo during a sales call. The case was quickly dismissed. (*Picault v. WBL*, SD NY, 2018)