

Keep complete records of complaints to counter last-minute legal claims

Here's some good news from the 8th Circuit Court of Appeals: The court, which covers Minnesota employers, turned down a petition to allow an employee to introduce a new discrimination claim that he failed to clearly outline in his original lawsuit.

Recent case: Aldrige sued his former employer, claiming he had been fired in retaliation for voicing complaints about being underpaid. He cited Title VII in the suit, but never mentioned having complained that somehow the underpayment was tied to race. It was only late in the litigation process that he charged his former employer with race discrimination.

The 8th Circuit Court of Appeals concluded it was too late to bring up that allegation. It dismissed Aldrige's case. (*Winfrey v. Forrest City et al.*, 8th Cir., 2018)

Advice: Be sure to keep good records of every internal complaint. Use a consistent system to log them.

That way, you will be able to testify that someone may have complained about pay, but never raised race or another protected classification as the basis for the alleged underpayment.

Having such detailed documentation establishes that the employee didn't engage in protected activity and therefore could not have been retaliated against.

Title VII requires that employees must have been on record as having opposed a practice made illegal by Title VII. Complaining to HR or a supervisor that pay disparities are due to race or some other characteristic would be protected activity. Merely griping about unfair pay rates isn't enough to support a discrimination claim.