

Expect lawsuit when inexperienced newbie suddenly replaces older, excellent worker

When an employer suddenly replaces a long-term employee with a younger, inexperienced one without explanation, the older employee may have enough evidence to file an age discrimination lawsuit and get to trial.

That's especially true if she has evidence that she performed well over the years and wasn't discharged for poor performance or some misdeed. Courts often greenlight cases like that, considering the facts to constitute a *prima facie* case of age discrimination.

Recent case: Deborah, who was in her mid-50s when she was terminated, worked as an administrative secretary for her town's director of public safety. She first worked for nine years for one director, followed by a four-year stint with his successor. Her reviews were always stellar. She worked for a third director for two years, again with great reviews and no discipline.

Then she was summarily dismissed and replaced with an inexperienced clerk half her age. Deborah sued, alleging she had been terminated because of her age.

The town tried to get the case dismissed, arguing that Deborah couldn't show that her age was the "but for" reason for her dismissal.

But the court said the case could go to trial based on the facts Deborah presented—that she was over age 40, qualified for her job and had been replaced by someone younger and less experienced. (*Famighette v. Rose, et al.*, ED NY, 2018)

Advice: Take a close look when faced with a request to replace a high-performing employee with a substantially younger one.