

Assemble objective data to justify disciplinary and termination decisions

Employers that have solid, objective information about poor performance seldom lose lawsuits over the firing of a sub-par employee.

Just one caveat: The more objective the data, the better.

Recent case: Ron worked for many years for a series of companies owned by the same Japanese corporation.

Ron, who was over age 60, suffered from a variety of medical problems that made him walk with a limp. He also had to wear sunglasses frequently to protect his eyesight.

In his final position, Ron was named president of a subsidiary. He was told his primary responsibility was to make it profitable.

Ron considered the CEO of the parent company a father figure who had protected him throughout his career with the related companies. That included several years during Ron's tenure with the subsidiary when he was unable to make it profitable. Then the CEO died.

The company's new CEO was less forgiving of escalating losses. He documented the profitability problems and asked Ron to produce a business plan. The board reviewed the plan and concluded that it wasn't workable. Then it fired Ron

He sued, alleging various kinds of discrimination, including age and disability.

The court dismissed Ron's lawsuit after reviewing the company's records. They showed Ron had been hired specifically to make the subsidiary profitable and that clearly hadn't happened. Ron offered no evidence that age or disability discrimination was the real reason he was fired. (*Udell v. Kenko International*, Court of Appeal of California, 2018)