

Be prepared to justify bonuses based on work performance

It seems inevitable. Anytime you award variable bonuses to some employees, there's apt to be some grumbling from those who got less or nothing at all. But if you make sure to base bonus calculations on reasonable and legitimate business reasons, that grumbling won't turn into a lawsuit you lose.

Recent case: Dorothy Freeman worked for North State Bank until a dispute over a bonus allegedly left her unable to work. Freeman, who is black, worked with two other loan assistants. Freeman supported one loan officer, while the other two—who are white—supported two and three loan officers.

At bonus time, Freeman got \$300, while the other two received \$600 and \$750. The largest bonus went to the administrative assistant who volunteered to support a third loan officer. Coincidentally, she had the lowest base salary.

Freeman cried race discrimination and began complaining up the chain of command. Several supervisors met with her and tried to explain the bonus differences.

Eventually, Freeman simply left work, claiming she "just wasn't able to go the rest of the day" because she was "stressed" and "had anxiety." She never returned to work.

Instead, she applied for disability payments under the bank's disability insurance policy and under the Social Security Administration's total disability program. She got both and was discharged after she exhausted all her leave.

Freeman then sued, alleging race discrimination. A trial court tossed out her lawsuit, and the 4th Circuit Court of Appeals refused to reinstate it.

The court reasoned that the bank had legitimate and valid reasons for awarding Freeman a few hundred dollars less than what her co-workers got. (*Freeman v. North State Bank*, No. 07-1251, 4th Cir., 2008)