

# How not to fire complaining employee: Use pretext, don't document real reasons

Employers that want to fire an employee who has made a sexual or other harassment complaint can find themselves in a precarious position. That's because sometimes employees file such complaints to avoid being disciplined. And sometimes, that strategy works, even though there may be legitimate reasons for termination.

You're wise to hesitate. Before firing any employee who has filed a complaint, make sure your reasons are solid—and extremely well documented.

That means checking to make sure supervisors followed company rules. Ensure that other employees with similar records were also fired. And be sure all documentation you are relying on was clearly created before the discrimination complaint.

In the following case, the employer ignored those reasonable rules and earned a retaliation jury trial—even though the court concluded the underlying complaint wasn't serious enough to be sexual harassment.

**Recent case:** Lori Martin worked as a contract nurse for a medical center. She alleged that a trainer made a pass at her and was sexually suggestive. She said he told her she had a beautiful smile, asked how she kept her figure, inquired whether she had a husband or boyfriend and described his own sex life.

She immediately complained to management, which began an investigation. The next day, the hospital told the temp agency Martin worked for to send another nurse in place of Martin.

Martin sued, alleging sexual harassment and retaliation. The medical center said she was replaced for chronic tardiness. But it didn't have any written documentation predating Martin's sexual harassment complaint. It claimed it had called the temp service many times, but no one there could remember the alleged calls.

The court dismissed Martin's sexual harassment complaint, saying the one-time incident wasn't serious enough. But it said the timing of her termination—plus the lack of pre-complaint documentation—was potential evidence of retaliation. It ordered a trial. (*Martin v. UT Southwestern*, No. 3:07-CV-1663, ND TX, 2008)

**Remember:** Written and dated documentation wins lawsuits.