

PROPER EMPLOYEE EVALUATIONS MAY FOIL DISCRIMINATION CLAIMS

By Paul D. Godec, Esq.

Courts have upheld the dismissals of age discrimination lawsuits because employers have extensively and properly documented the performance deficiencies of their employees. For instance, in 1987, an employee began working for Sprint's predecessor. In 1990, the employee began working in another division on a part-time basis. In 1993, the employee began working for the division full-time. In 1995, the employee received a promotion.

From 1990 to 1998, the employee received favorable performance evaluations and pay increases. Yet, his performance evaluations in 1996 and 1997 showed certain deficiencies. In 1998, a new manager began supervising the employee. In 1999 and 2000, the new manager documented meetings with the employee about performance deficiencies despite evaluations that he "fully meets expectations."

In 2001 and 2002, Sprint began using new performance evaluation systems. Under the new systems, the employee consistently scored as "less effective" than other employees in the same division. One evaluation noted that, despite being the longest tenured employee in the division, the employee took longer to perform many tasks than less-experienced employees.

In 2003, different managers evaluated the employee's performance on several specific projects. In January and February 2003, and twice in May 2003, the employee received criticisms for his performance on those projects. In June 2003, two supervisors suggested that he should apply for a position in another division. In July 2003, the employee received a written warning that his performance had to improve within 30 days. In October 2003, two managers identified additional performance difficulties and fired him. At the time, the employee was 50 years old. The employee sued Sprint for age discrimination.

An age discrimination claim requires evidence that an employee (1) is at least 40 years old; (2) was doing satisfactory work; (3) was discharged; and (4) was replaced by a younger worker. After this initial showing by the employee, an employer must offer legitimate and non-discriminatory reasons for the discharge. If an employer offers evidence of legitimate and non-discriminatory reasons, then an employee must demonstrate that the employer's reasons constitute a pretext for discrimination.

In this case, the trial court dismissed the employee's lawsuit for a lack of evidence of pretext. The appellate court rejected the employee's appeal for several reasons. First, the court found no pattern that older workers received less favorable reviews under the new evaluation systems. Second, the court noted that younger workers who received similar reviews as the employee had resigned before Sprint took any adverse employment actions. Third, the court

noted that the employee consistently received negative evaluations from several managers. Fourth, the court rejected the assertion that comments about the employee's "longer tenure" suggested age discrimination. The court found that employers could legitimately expect their employees' performance to improve with experience.

Sprint's systematic, accurate, and honest performance evaluations convinced the court that no evidence of pretext existed. This result should remind employers of the importance of systematic, meaningful, accurate, and honest performance evaluations of each employee. *See Bolton v. Sprint United Mgmt. Co.*, 220 Fed. Appx. 761, 2007 U.S. App. LEXIS 5468 (No. 06-3042; 10th Cir., Mar. 6, 2007).

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