

Strong evidence needed to prove race bias when same person hired, fired worker

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Title VII of the Civil Rights Act of 1964 forbids discrimination based on numerous protected categories (e.g., race) in any aspect of employment, including hiring, firing, pay, job assignments, promotions, and any other term or condition of employment. It's not uncommon for employees to allege discrimination based on a protected category known at the time of hiring. If the termination decision is made by the "same actor" as the hiring decision, courts apply an "especially steep" burden on the worker to prove the reason for the adverse action was pretextual (or a cover-up for bias). How can an employer defend itself against discrimination allegations when the same actor made both the hiring and the firing decisions?

Alleged facts

In March 2017, Leo Murphy was hired as an electrician by the superintendent in charge of the tenant improvement department (TID) of a local electrical company. At the time he was hired, he was the firm's only African-American employee. His employment ended in November 2018.

In the approximately 18 months of Murphy's employment, the following events took place:

- He was transferred to the service department (SD) and offered a raise.
- He was suspended without pay for repeated failure to answer the phone or return missed calls while on call. Four months later, he was written up for the same issue.
- He was transferred back to the TID.
- The TID superintendent accepted him back into the department and preserved the higher rate of pay.

- He was laid off by the superintendent due to lack of work.

Murphy sued his former employer alleging race discrimination (disparate treatment) in the U.S. District Court for the District of Arizona. The company asked the court to enter judgment in its favor.

Disparate treatment allegations

Murphy demonstrated the necessary elements for a disparate treatment claim: He (1) belonged to a protected class (African American), (2) was qualified for the position (never disputed), (3) was subjected to an adverse employment action (written up and laid off), and (4) was treated less favorably than other similarly situated employees outside of his protected class (a Caucasian electrician received more hours and wasn't laid off).

In response, the company provided a race-neutral rationale for each adverse action. The superintendent explained he considered the budget for available projects and compared it to the relatively high wage Murphy earned in deciding to lay him off. The SD manager explained he wrote up Murphy for not only missing calls but also failing to timely return them while on call. The Caucasian employee who received the warning returned missed calls in a timely fashion.

Same actor, higher burden

It became Murphy's burden to prove the nondiscriminatory reasons for the adverse actions were pretextual. According to the court, since the "same-actor inference" applied, his "burden was especially steep," and his claims couldn't survive unless he presented a "strong case of bias."

While Murphy presented evidence to support his position, the court found it wasn't proof of direct racial animus. Accordingly, judgment was entered in the company's favor.

Takeaways for employers

In Murphy's case, the employer had the benefit of the same-actor inference. Since that isn't always the case, you should take care to ensure managers are properly trained against discriminatory conduct and know how to handle bias complaints. Properly documenting the reasons for legitimate business decisions or disciplinary actions is also helpful in defending against the claims.

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