

## Rigorous RIF Process Defeats Discrimination Claims

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A recent federal trial court decision underscores the importance of the effective use of a rigorous reduction-in-force (RIF) selection process. In *Ameti v. Sikorsky Aircraft Corp.*, Sikorsky beat back multiple discrimination claims asserted by a former engineer selected as one of 17 of his peers in a reduction in force. No. 3:14-cv-1223 (VLB) (U.S. Dist. Ct. Conn. February 6, 2018). Sikorsky utilized an Employee Assessment Matrix to determine “the ability of the employee to perform under current and projected business conditions.” The assessments measured five factors and assigned scores: 1. Achieve Results (1-10); 2. Criticality of Skills (1-10); 3. Qualifications (1-5); 4. Business Orientation (1-5); and 5. Interpersonal Skills (1-5). Sikorsky smartly did not use past performance reviews in assessing employees for the selection process, recognizing that they are “retrospective looking and used primarily as developmental tools . . . .” In awarding summary judgment for Sikorsky, the court confirmed its role not to act as a “super personnel department” and second guess the company’s business judgment. Sikorsky was able to use its scoring process to objectify its judgment that, compared to his peers, the plaintiff’s skills were lacking, he made mistakes that he relied on coworkers to correct, and he was more inclined to sit at his desk than be on the shop floor. All of the plaintiff’s performance evaluations scored him as “fully competent” – including the draft evaluation that was prepared just before the selection decision. Absent the RIF process, the plaintiff did not appear to be at risk of losing his job. Taking the time to develop a selection process and thoughtfully implement it pays real dividends. Not only can it provide a defense to subsequent claims of discrimination, it helps the organization make the best possible selection decisions. This process should be placed within the scope of attorney client privilege such that working drafts and notes are protected. The process needs to include at least two levels of up-channel review – which the court cited in the Sikorsky case. The economic need for a reduction in force is generally given a lot of deference by courts. The selection process for a RIF can be vulnerable to allegations of unlawful bias when there is no contemporaneous process developed to support the selection decisions.

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