



Navigating Discrimination Claims With Strong Documentation

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A successful workplace is a lot like a winning crew team. Each rower has a role to play and, ideally, the team is working in sync. One rogue or poorly performing rower can bring the whole crew down. As in rowing, if you want your workplace to perform like a winning team, you need to address the weak link. But how do you do that without fear of a discrimination or retaliation claim?

The best way to protect yourself is to ensure that your documentation can rebut such a claim by showing a legitimate business reason for the decision. Typically, that reason is the employee's job performance was deficient in one or more respects. You also want to avoid glaring contradictions between a negative performance evaluation or improvement plan and the stated reason for such action. The purpose of a negative performance evaluation or improvement plan is to provide constructive feedback with the hope that it will lead to better performance by the employee. If the employee fails to demonstrate improvement, disciplinary action is much easier to defend. The key is providing the employee an opportunity to improve.

A recent Seventh Circuit decision, [Fields v. Board of Education of the City of Chicago](#), illustrates the importance of well-documented improvement plans and evaluations to defend against discrimination or retaliation claims.

In this case, a newly hired principal set high expectations for teachers in preparing lesson plans to ensure their lesson plans aligned with state learning standards, the school's curriculum, and his view of quality teaching. The principal provided extensive training on what was expected, and required all teachers in his building to submit weekly plans.

When a veteran teacher failed to meet the principal's expectations, she was placed on a performance improvement plan. The teacher refused the

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principal's offers to work with him to improve her teaching and lesson planning, and instead retired mid-year. Several months later, the teacher filed an age discrimination and retaliation lawsuit against the principal and school. In response to the lawsuit, the school characterized the issue as resentment by the teacher toward the principal for making her work harder than she had to work under his predecessor. The principal was able to provide strong evidence that the teacher failed to turn in lesson plans and failed to attend trainings, among other insubordinate acts, resulting in a favorable decision for the school.

While in some cases, courts have found that negative performance evaluations or performance improvement plans could support a discrimination or retaliation claim, this decision shows that strong evidence of a well-documented plan or evaluation is needed for a company to prevail in such cases.