

Most employers understand that they may not terminate someone for being a member of a protected class (or otherwise having protection under the law).

But in states where at-will employment is the law of the land (all states except Montana), any other reason is fair game.



Lack of cultural fit can be a reason for termination, but employers should ensure that... [more](#)

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Theoretically, then, an employee who isn't getting along with his or her coworkers (and who has no contractual promise of employment) could be fired for a lack of chemistry.

However, one recent case reminds employers that they must consider both the company's actual reason for termination and also what could appear to be the reason for firing an employee.

The right to fire at will doesn't equate to being cavalier with employee terminations. For instance, if a longstanding employee makes an error, she could be fired for the problem. But if her company hasn't treated other employees this way the first time they made similar errors, and the employee has reason to allege that the actual reason for termination was discriminatory, a court may not be convinced that the employee was terminated for a legal reason.

Firing for lack of fit

Along those same lines, employers are perfectly within their rights to terminate an employee who doesn't get along with coworkers. But if, as happened in a recent court case (*Goodwine v. City of New York, et al.*, 2016), the employee believes that "you don't fit in" actually means that he or she is too different from her peers because of protected characteristics, the once-acceptable reason for termination may not be so defensible.

In this case, an African-American female employee learned that she was paid considerably less than her (white) male peers. She complained, asking for a raise, but it was denied. The employee continued to point out the disparity and also applied for other open positions, where she was told that she wouldn't likely "fit in." After white men received the jobs she had applied for, she sued for sex and race discrimination.

The employee alleged that the employer's comments about not fitting in were actually veiled discrimination. That is, the reason the employer didn't believe the employee "fit in" was that she was a woman and that she was African-American.

The Federal District Court of the Southern District of New York allowed the case to go forward based on the employer's "fit" comments and the fact that the employee was paid less than the men.

Considerations in termination

While this may be far from a final judgment in favor of the employee, the case should be enough to remind employers to take an extra moment to consider whether their reason(s) for termination (or for denying a promotion or transfer) could be an attempt to mask either conscious or unconscious bias.

If the company concludes that the reason for termination is without bias, it must still consider the possibility that the reason might not be perceived that way, remembering that there are virtually no risk-free reasons for termination.

As always, consistency with policy application and thorough documentation of an employee's path to termination are paramount. These steps are fundamental in helping ensure an employer can prove its motivations were legal ones if the company is ever called to court.

The key to remember is this: Lack of cultural fit can be a reason for termination, but employers should ensure that such a decision doesn't come with discriminatory bias.