

# CLIENT ALERT

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## **DOCUMENT! DOCUMENT! DOCUMENT!**

*How well-documented performance reviews saved one company from a costly jury trial and helped defeat a former employee's claim of employment discrimination*

Although many employers would prefer not to spend time and energy on completing periodic written employee reviews, a recent case from federal court illustrates the importance of this process.

In a recent case, the United States District Court for the Eastern District of Pennsylvania (covering Philadelphia and its suburbs), ruled that a discharged employee failed to prove that he was terminated because of his race – African-American.

The plaintiff in this case was hired by a pharmaceutical company as a sales representative. His performance was reviewed on a monthly and bi-annual basis. The monthly reviews were completed by a manager and consisted of a rating from one (lowest) to four (highest) on a variety of categories.

Based on generally unsatisfactory performance ratings, plaintiff was placed on a Performance Management Plan and was given 90 days to improve in various specified areas. With continued unsatisfactory ratings, plaintiff was terminated 73 days into the performance management plan.

Plaintiff thereupon brought a claim under federal and state law for unlawful employment discrimination.

The Court set forth the initial requirements for a plaintiff attempting to establish race discrimination (or other unlawful discrimination). Specifically, a plaintiff must demonstrate that he/she:

(1) is a member of a protected class; (2) was qualified for his position; (3) suffered an adverse employment action; and (4) suffered the adverse action under circumstances that give rise to an inference of discrimination.

In this case, the fourth element was at issue: whether plaintiff's termination gave rise to an inference of discrimination on account of his race.

The Court, after analyzing plaintiff's performance ratings, concluded that plaintiff could not demonstrate an inference of race discrimination. Plaintiff's comparisons to Caucasian co-workers did not convince the Court, as these documented performance issues and employment history differed from plaintiff's.

The Court also rejected plaintiff's claims based on plaintiff's beliefs that his manager spoke to him in a demeaning way. A subjective belief of racial discrimination is insufficient, the Court held, to establish an inference of discrimination.

Although not necessary for its ruling, the Court also found that the company had a legitimate non-discriminatory reason for terminating plaintiff: failure to successfully complete the terms of the performance management plan and uncorrected sales deficiencies identified by his managers.

Lesson learned: the company's continuous and contemporaneous documentation of plaintiff's performance was the critical factor in the Court's dismissal of this case.

Anything short of these performance reviews would have caused the case to be sent to a jury – with results only to be guessed at!