

D.C. Circuit Demonstrates the Danger of poor Documentation

1 min read

Jan 24, 2012

In a decision released this week, the D.C. Circuit has proven that there is still truth to the old adage: document, document, document. The case, *Hamilton v. Geithner*, arose when a federal employee was passed over for a promotion. The begrudged employee felt that he had been far more qualified than the employee selected for the position. He brought suit against the IRS (his employer) under Title VII, calling its assertion that the selected employee had been more qualified a pretext, and alleging that the other employee (a Caucasian female) had actually been selected over him (an African-American male) based upon his race and gender. The district court granted summary judgment to the employer, finding that the disparity in the employees' qualifications was "not significant enough to warrant an inference of discrimination."

On appeal, the D.C. Circuit determined otherwise. The employee's "superior qualifications taken together with other flaws in the employer's explanation," the D.C. Circuit found, "creates a genuine issue of material fact that only a jury can resolve." What were those "other flaws in the employer's explanation?" Specifically, the record contained "no contemporaneous documentation of the [employer's] proffered explanation." In other words, there had been no notes from the job interviews, no complete documentation of the job requirements, and essentially no written evidence of the interviewers' observations or conclusions. (Embarrassingly, the IRS did turn in one page of handwritten notes which it described as "vague," "ambiguous," and incomplete.) The Court concluded that "[t]o sum up, ... we believe that, when taken together, the evidence of a significant disparity in the candidates' qualifications, the highly subjective nature of the [employer's] proffered nondiscriminatory explanation, and the absence of any contemporaneous documentation supporting that explanation could lead a reasonable jury" to find for the employee. This case is a good reminder for all employers that the failure to document can turn what would be an easy case into a disastrous one.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

Pretext, Documentation