

# **Tenth Circuit Finds no Pretext in the Termination of an Employee who was the Subject of 23 Reported Complaints**

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An African-American male worked as a technician for 10 years. During that time, he was the subject of 23 reported complaints from co-workers and supervisors, including five complaints of sexual harassment. The employer performed an investigation based on the complaints, which resulted in the employee's termination. The investigation revealed that the employee had received many final warnings and should have been terminated much earlier. After being fired, the employee sued, alleging that the employer discriminated against him based on his race and retaliated against him for complaining about the lack of African-Americans in management. The employee argued that his long disciplinary history was proof that his inappropriate behavior could not have been the motivation for his termination and must have been pretext for discriminatory and retaliatory motives. The U.S. Court of Appeals for the Tenth Circuit rejected the employee's claims and held that the employer's discipline of the employee, including his termination, was coherent, consistent and lawful. Employers should be sure to have a coherent, progressive disciplinary policy that is applied consistently to all employees. Such a policy will serve as a valuable defense should claims of discrimination or retaliation arise after an employee has been disciplined.

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## Topics

Retaliation, Pretext