

The property management business is getting pretty good about ensuring that employees all take fair housing training on a regular basis. But what about training on employment discrimination issues? A new decision from the United States Supreme Court emphasizes how important this is.

The case before the Supreme Court involved an allegation that a hospital discriminated against an employee because his immediate supervisors did not like the fact that he was periodically called away for military duty and training exercises. His supervisors and coworkers resented the fact that they were having to cover for him while he was off on these non-work related activities and one of his supervisors was heard commenting that she was going to see what she could do to get rid of him because of all of the problems this caused. Write-ups for minor violations and a work improvement plan followed.

Subsequently these two immediate supervisors wrote him up for failing to comply with the work improvement plan. That write-up got into the hands of a more senior supervisor, who was unaware of the immediate supervisors' bias and believed that he was simply dealing with a troubled employee. The senior supervisor terminated the employee and the employee, of course, sued, alleging unlawful discrimination.

Following a trial on the merits the case eventually wound up at the United States Supreme Court. There, in a unanimous decision, the court held that the biased motives of the employee's immediate supervisors could be attributed to the company and the company could be held liable for discrimination, even though there was no evidence suggesting that the decision maker was aware that the original write-up was influenced by bias because of the employee's protected status.

The Court held that the USERRA, like Title VII of the federal 1964 Civil Rights Act, prohibits an employer from taking adverse action against an employee if that action is motivated by hostility toward a person's protected class. The Court specifically said that it was irrelevant that the hostility was directed by someone who did not have the authority to terminate the employee; it was sufficient that the person who did have that authority ultimately made his decision based on write-ups that were issued because of a discriminatory animus toward the employee. The Court also concluded that it was irrelevant that the decision maker had no knowledge about the immediate supervisors discriminatory animus; it was sufficient that the ultimate adverse action came about because of their bias.

This decision is both groundbreaking and offers a clear warning to employers. Employers now face an expanded risk of liability unless they make certain that all

employment-related decisions are made without regard to an individual's membership in any protected class.