



Mineral



Question of the Week

May 15, 2024

Question

We have a longtime employee who's no longer meeting expectations. The owner is afraid to hold them accountable because they're over 40 and therefore in a protected class. What can we do?

ANSWER

In general, you shouldn't let an employee's protected class status deter you from holding them accountable to your performance expectations. After all, everyone belongs to protected classes. Being in one simply means you can't be treated differently because you're in that class.

Now, if your organization has a history of bias in the workplace or of holding members of a certain protected class accountable for poor performance when others aren't, then you'd be looking at a higher risk of a discrimination claim. Assuming that's not the case, there's really no cause for alarm.

If you decide to talk to this employee about their performance, don't reference their age (for example, by openly speculating that their drop in performance has something to do with their getting older). Instead, focus on how their performance isn't meeting your expectations and what needs to change. As always, document the performance issues and the steps taken to address them.

You can find more information on protected classes and discrimination on the platform.

This Q&A does not constitute legal advice and does not address state or local law.