

WAS SALES REP "HARD TO WORK WITH" OR SIMPLY TOO OLD?



Kimberly-Clark

A sales rep was fired because customers found him “hard to work with.” He alleges that his termination was in actuality a violation of the Age Discrimination in Employment Act (ADEA) and Michigan’s Elliot-Larsen Civil Rights Act. The man began working in sales at Kimberly-Clark, which manufactures personal and healthcare products, in 1985. His sales were consistently good, which were reflected in his annual performance reviews. In 2000, despite garnering a performance rating that “exceeded expectations,” the man was encouraged to be more “flexible,” particularly in reference to changes occurring at the company. He was promoted to Customer Business Manager III in 2004. His overall performance rating was good, but he was criticized with regard to his flexibility and interpersonal skills. The following year, he was again cited for his lack of interpersonal communication, the reviewer noting his involvement in trivial disagreements and even becoming confrontational with customers during presentations. His inflexibility and customer interaction were marked for improvement once again in 2006, and this time the reviewer believed the man needed to improve his “Leadership Qualities.” The 2006 review specified a “key customer,” someone who worked in the baby department at Meijer. The buyer purchased millions of dollars in products, and Kimberly-Clark was striving to keep her content. The plaintiff admitted to not having a good relationship with the buyer, who complained to the company on more than one occasion. She declared him “hard to work with” and eventually stated her preference of working with someone else. In April 2007, the plaintiff was placed on a Performance Improvement Plan, which noted other customers’ comments that were similar to sentiments expressed by the Meijer customer. The plaintiff did not successfully complete the plan, which cited a continued inflexibility, but, despite the warning that he may be terminated, he was offered a 30-day Last Chance Agreement. This also included the possibility of termination should it not be properly completed, and this was indeed the



man’s last chance. He was fired in August of the same year. He filed a charge with the EEOC (Equal Employment Opportunity Commission) and followed it with a lawsuit, alleging that he was unfairly treated due to his age – he was 53 at the time of termination. A district court granted summary judgment in favor of Kimberly-Clark, believing that the company had a legitimate reason to fire the plaintiff and that he had likewise failed to adequately prove pretext for the termination. On appeal, the man claimed that the district court had erred in its ruling, even alleging that the court had held him to “an improperly high proof requirement.” Appellate judges disagreed, seeing very little evidence of discrimination based on his age. The plaintiff did point to another, younger employee who he claims was treated preferentially, but he failed in showing that the two had identical “shortcomings” cited in their performance reviews. Accordingly, the appeals court affirmed the district court’s decision.