

## AT&T SALES MANAGER FIRED FOR "INFLAMMATORY AND INSUBORDINATE" EMAIL



An AT&T (then Cingular Wireless) sales manager filed a lawsuit when she was fired after complaining that she and sales representatives were being paid inadequately. Her case saw its way to trial, returning a verdict in the company's favor. The woman's appeal cited not an unfair decision but rather that the judge had not properly instructed the jury. The sales manager and the reps that she oversaw were assigned a monthly sales quota. Their compensation was based in part on how much their quota was met. The woman claimed that the sales quotas in June 2004 increased considerably and were even higher the following week. She feared that the representatives' pay would decrease or that they would be reprimanded for failing to meet the quota. The company later testified that the sales quotas were sent on the second of the month and did not increase after that date. In early July, the woman allegedly received a two-hour phone call from her supervisor, who went on a "tirade" regarding the Reconciliation Project – an effort to rectify problems with Cingular Wireless' sales tracking system and which the supervisor had to complete on the sales manager's behalf. There was another, shorter call the next morning, with similar behavior. Shortly thereafter, the supervisor emailed the manager an attachment with a Performance Improvement Plan, which cited the inability to finish the project and failing to timely distribute the monthly sales quotas – the woman stated in court that she'd delayed distribution because she believed the quotas were inaccurate. The manager's response to the email was a reply that was also sent to an HR rep, fellow sales managers and some of her subordinates. In it, she said that she was "held hostage" on the phone, accused the supervisor of "harassment and abuse," and claimed that he'd falsified charges of performance issues. The company fired the woman, citing the "inflammatory and insubordinate" email. The woman filed suit, alleging a violation of the Colorado Wage Claim Act. Her source of contention even before hearing the jury's verdict was that the judge had erred in instructing the jurors. First, there was an instruction noting that the complaints of sales quotas were not protected activity under Colorado law. But appellate judges disregarded the woman's challenge to the instruction, as she was unable to prove that the change in quotas had any effect on bonuses or compensations. Next, the woman claimed that the instruction regarding complaints of wages inaccurately implied that the wages must be earned or determinable, but the appeals court believed that the law's plain language said exactly that. Finally, the plaintiff challenged the judge's failure to instruct the jury on intemperate response – that an employer cannot terminate an employee based on that person's severe reaction to the employer's provocation. Appellate judges, however, did not believe that such an instruction was applicable in this case and that the instruction concerning pretext was enough to show that the supervisor may have provoked the woman. The appeals court dismissed all of the plaintiff's challenges with regard to jury instructions and affirmed the district court's decision.