

## USPS EMPLOYEE FIRED FOR EXCESSIVE ABSENCES AND SUSPENSIONS -- OR WAS IT DISCRIMINATION?



A woman working for the USPS was fired for excessive absences and a history of suspensions. But she claimed the real reasons for her termination were her race and sex, and she was further discriminated because of a disability from a back injury. She made her way to a district court in Illinois. The woman, an African-American, filed a lawsuit for discrimination and retaliation, citing five adverse actions from her employers. Firstly, she alleged that the USPS delayed paying her salary for two months after she'd missed work from her injury. Next, she claimed that she was transferred to another annex due to discrimination and retaliation for her complaints of discrimination. A third allegedly adverse employment action was what she asserted was a pattern of harassment from her supervisors. She'd been told to take her lunch before 3:00 pm and to work into the night if she couldn't finish her route during daylight hours. Supervisors also followed her on her route, told her to cross in wet grass (which she believed was hazardous) and asked her to verify mail addresses between stops. Additional harassment included warning her of her absenteeism, denying her non-union representation at pre-disciplinary interviews and reminding her of USPS policies (which she conceded was critical of her work). The other two claims were the only ones the district court acknowledged as material. She was put on long-term suspension after profanely informing a supervisor that she was going to assault a co-worker and responding in a similar manner when the supervisor asked her to calm down. Finally, the termination itself was accepted as an adverse employment action. She was fired based on 53 unauthorized absences in a three-month period and her disciplinary record, including a letter of warning, a seven-day suspension, a 14-day suspension and the long-term suspension. The district court ruled in favor of the USPS. Only taking the latter two claims into account, judges did not believe that the plaintiff had shown that she was adequately performing her job, a requirement as she was relying on the indirect method of proof. Judges also accepted the Postal Service's argument as factual because the plaintiff didn't comply with Local Rule 56.1(b), which stipulates that, when opposing a motion (in this case, one for summary judgment), she would need to reference affidavits or parts of the record to support her denials – but she failed to do so. Appellate judges agreed that the first three claims were not materially adverse – the two-month delay in payment and the transfer had no effect on her employment, and the reputed hostile work environment did not reveal a pattern of threatening or humiliating harassment. She compared herself to a white male employee with numerous absences but who was not disciplined. But he had made no profane threats and did not have as high a number of absences as the plaintiff – the latter point which the appeals court asserted was reason enough for her termination. The woman also argued that she had shown enough evidence to support the retaliation claim under the direct method of proof. But because she'd relied on the indirect method in district court, appellate judges could not consider this particular argument. The grant of summary judgment for the USPS was affirmed.