




**2019**  
**HR FLORIDA**  
 CONFERENCE & EXPO

**August 25-28, 2019**  
 GAYLORD PALMS & CONVENTION CENTER  
 KISSIMMEE, FLORIDA

**2019**  
**HR FLORIDA**  
 CONFERENCE & EXPO

**August 25-28, 2019**  
 GAYLORD PALMS & CONVENTION CENTER  
 KISSIMMEE, FLORIDA

**DIFFICULT CONVERSATIONS  
 WITH YOUR “PROBLEM”  
 EMPLOYEES**

**JENNIFER CARROLL**  
 FISHER PHILLIPS, FORT LAUDERDALE  
 jcarroll@fisherphillips.com  
 954-847-4716





[www.hrflorida.org](http://www.hrflorida.org)



Please silence your cell phones.



Tweeting from the session is encouraged at #HRFL19.



After this session, please complete the session/speaker evaluation on the HR Florida Conference App.



Due to Fire Marshal regulations, each person must have a seat. Standing attendees will be asked to select another concurrent session.



[www.hrflorida.org](http://www.hrflorida.org)

## Overview

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Today, instead of our usual focus on legal compliance, we will discuss challenging employees and how to handle difficult situations.
- Our focus is best practices to address some of the most challenging employee relations concerns.
- We will also review several case studies to address some the scenarios you might encounter at your workplace.

## Who Are We Talking About?

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Employees with hygiene issues or with conditions that are exacerbated by scents, perfumes, cleaning substances, etc.
- Employees who engage in anti-team or bullying behavior which negatively impacts the workplace
- Employees with substance abuse issues
- Employees who engage in inappropriate relationships that cross boundaries and negatively impact the workplace
- Employees whose religious beliefs are in conflict with the beliefs or behaviors of others

## Who Are We Talking About?

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Employees whose poor performance has historically not been managed properly, and whose managers now insist upon termination
- Employees who may have engaged in protected conduct to secure whistleblower status and for whom a retaliation claim is a likelihood
- Employees who are suspected of abusing sick leave, PTO, or related policies, and who pose a challenge under intermittent FMLA leave rules
- Employees who exhibit or display angry, unprofessional, and potentially violent behavior

## How Do...

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

### **I Lead, Manage and Terminate if Necessary “Untouchable” Employees:**

- Consistent documentation.
- Performance-based management with opportunities to improve.
- Rely upon well-publicized complaint procedures.
- Managerial training.
- Culture of compliance.
- Apply same standards across the board and have comparative data.

## How Do...

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

### **I Deal with Chronic Complainers/Issue Creators:**

- On a case-by-case basis.
- Important to remain calm and listen to the employee’s complaints, even if they are irrational.
- Escalate only legitimate complaints and explain that those concerns which have no factual basis will not be elevated.
- Document, document, document.
- Ask for a written statement every time.
- Do not “pathologize” bad behavior or poor performance as the ADA and other EEO laws do not excuse bad behavior or poor performance.
- Always focus on performance and how behaviors impact the workplace.

## Best Practices...

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

### Dealing With Bullies and Toxic Employees:

- Do not be afraid to address amorphous behavior.
- Do not describe the behavior as “a bad attitude,” but focus on the results and impact on others, such as the creation of an unprofessional or uncomfortable work environment for another.
- Make it an element of every job description and a requirement of every employee to contribute to a workplace of dignity and respect.
- Make failure to comply with this workplace environment a terminable offense.
- Focus on the new “buzz words”: disrespectful interactions with others; anti-team behavior that undermines the goals of the company or the team; toxic behavior that creates an uncomfortable and unacceptable environment for co-workers; and if relevant, failure to comply with EEO regulations and policies.

## Leadership Principles for Managers

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Deal with complaints and problems.
- Remember the goal is to prevent, resolve, and avoid issues—not to “win.”
- Meet challenges head-on, which means documenting and providing training when necessary.
- Be a positive force/influence and a person who communicates effectively while upholding performance standards.
- Model appropriate workplace conduct.
- **Filter issues to determine what needs to be raised with HR or senior management.**

## Scenario No. 1 – The Bible Belt

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

Julie is an enormously successful Bible sales person for the Old Time Bible Company (OTBC). She and her partner, Suzanne, frequently post on Facebook about Suzanne's business "Jesus Loves All," which promotes the interests of the gay, lesbian, and transgender community.

Both Suzanne and Julie often debate local officials about these issues, and frequently post negative comments about Donald Trump.

What are your concerns when (i) OTBC's biggest customer demands that Julie be removed from its account because of her social media activities and political activities (ii) co-workers refuse to work with her, citing her "non-Biblical" beliefs?

## Analysis and Best Practices

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- So-called First Amendment rights.
- Issues of professionalism and tolerance in the workplace.
- The role of customer preference in discrimination cases.
- The impact of social media in the workplace.
- Expressions of political belief, and consideration of this activity as "concerted" under the NLRA.

## Scenario No. 2 – Breaking Bad

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

Rob, a senior professional, is waiting at your door when you arrive this morning and tells you there will probably be a media story about him which might be embarrassing to the Company. He tells you: “I fell asleep in the parking lot of a fast food restaurant last night and police officers knocked on my window about 2:00 a.m. They searched my car and found prescription bottles of Xanax and opioids I had been taking for my bad back. You may remember I was injured at work last year, filed a worker’s comp claim, and have been seeing a medical doctor and a chiropractor ever since. I also have a prescription for Suboxone, which is to help me to get off the opioids. I think I am addicted to both of these drugs and have decided to get some help.”

He goes on to tell you that he is willing to sign a “last chance agreement,” and will do anything to preserve his job, but when you start digging, you are going to find he has abused his Company credit card privileges and has rolled up a large tab for a gambling trip to Las Vegas. He asks for forgiveness and for the Company’s support.

## Analysis and Best Practices

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Impact of state and local laws regarding substance abuse issues, including possible drug testing which might be required by a last chance agreement.
- The wisdom and content of a last chance agreement.
- ADA requirements and issues with ongoing substance abuse concerns.
- Company’s obligations to fund treatments.
- Necessity of forgiveness of financial impropriety?
- Impact on worker’s comp?



## Scenario No. 3 – Dirty Documentation

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

The head of operations approaches you about a strategy to eliminate the position of Padma, a supervisor with 10 years of experience. She is one of only two women in the Department of approximately 50 and is of Indian ancestry. The white male senior manager acknowledges that Padma's performance, at least on paper, has been excellent, and that all of her evaluations meet or exceed expectations. In most years of employment, she has received a raise and/or incentive compensation. He tells you, however, he has been afraid to manage her properly; has likely missed documentation opportunities; and is uncomfortable managing an Indian woman. He suggests a job elimination of three people from the department including Padma, but notes that the other two, both males will be qualified to bid on open positions and likely will not be expected to lose their jobs.

## Analysis and Best Practices

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Integrity of evaluation system.
- Training of managers and supervisors to complete a performance evaluation accurately.
- The risks of a RIF of one.
- How to manage and resist lazy supervisors who do not timely document disciplinary issues.
- Basics of proper documentation.
- Concerns about lack of comfort in managing Padma.



## Scenario No. 4 – Social Media Gone Crazy

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

Delilah and Jennifer are RNs at your hospital facility. They belong to a Facebook group of nursing staff who regularly communicate about scheduling issues. Delilah was reluctant to make her Facebook account public, but did so only because the hospital permits nursing staff to switch schedules using the Facebook group. Delilah now says she had good relationships with all co-workers until they started reading her previously private Facebook page.

Jennifer then told her she did not approve of Delilah's husband being a Pentecostal minister. Jennifer also stated she was not in agreement with some of the beliefs of Delilah and her husband, including beliefs related to gay marriage, abortion, and other controversial issues. She also stated she was not in agreement with the political views Delilah and her husband express or the activities of their church. Delilah now feels isolated from her peers and complains to you that no co-workers will exchange shifts with her or show her the most basic courtesies. She believes she is being treated unfairly and is the subject of "retaliation" by her peers because of her religious and cultural views. She also feels this would not have happened if she had not been "compelled" to join the Facebook scheduling group.

## Analysis and Best Practices

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Discussion of social media and possible negative impact in the workplace.
- Need to investigate issues that have been raised by Delilah?
- Possible counseling and professionalism solutions for the group.
- Proper understanding of retaliation, and distinction between supervisor action and peer action.

## Scenario No. 5 – Failure to Disclose

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

A new employee, Larry, reveals he is a Seventh Day Adventist and can no longer work on Saturdays. He mentioned this to his direct manager yesterday, who then said to him: “Why didn’t you tell me this, Larry, when you applied? Didn’t you know your regular schedule would include Saturdays? If you had told me then, I could have done something about it. We can’t let you have Saturdays off. Everyone will then want Saturdays off, and we all know it is one of our busiest days. It won’t be fair to everyone else. So I will do my best, but there are no guarantees.”

He tells you he is upset and anxious following this interaction with his manager, and because he suffered PTSD while fighting in Iraq in the mid-90s, he is certain he will require time-off to deal with anxiety and depression from time-to-time. He acknowledges he has no FMLA entitlement.

## Analysis and Best Practices

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Religious accommodation.
- Management attitude that accommodation should have been sought in advance.
- Impact of co-worker discontent in connection with ADA or Title VII reasonable accommodations.
- Absences of FMLA coverage and possibility of time-off as ADA reasonable accommodation.
- Interactive process under the ADA and best practices associated with reasonable accommodations.
- Possible issues with intermittent leave.

## Scenario No. 6 – Fragrant Blossoms

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

Anne and Steve are co-workers in your company's call center. They all work in cubicles. The call center floor has over 100 such cubicles. They report the person next to them, Evelyn, not only wears very heavy perfume, but has plug-in air fresheners throughout her cubicle area. According to Anne and Steve, it is virtually impossible for them to work in their cubicles as they both suffer headaches and nausea because of the excessive perfume in air fresheners. They report they have tried to handle this on their own, but Evelyn tells them it is none of their business and that she needs these fragrances to help deal with her depression. Anne and Steve ask for a transfer to another location and for removal of the sources of scent. Both bring in a note from a local chiropractor noting their sensitivity to various smells, and stating further that noxious chemicals are stored in the kitchen of the call center and used to clean the restroom facilities, and that unless something is done, they are contacting OSHA.

## Analysis and Best Practices

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Various ADA issues involving Anne, Steve, and Evelyn.
- Notes on interactive process.
- OSHA rules and regulations and concerns.
- Workplace of dignity and respect.

## Scenario No. 7 – Family Affair

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

Christie and Ed both work at the local paper mill. Almost all of their co-workers know they have been engaged in a long-term affair. Both are married and have three children each. Their adult children work at the mill also. Just recently, Ed has been promoted to supervisor on the day shift. He and Christie asked that she be transferred to the evening shift so they will not be working together. Simultaneous with these events, Christie's son and Ed's daughter, both of whom work at the mill, have an argument in the breakroom, which results in a fist fight. As a result, evening shift co-workers of Christie come to HR, claiming they are in fear for their safety; know that Christie's son has a gun collection; and remind you that the workplace is one of the most dangerous environments in America.

## Analysis and Best Practices

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

- Conflict resolution tips.
- Genuine concerns about workplace safety.
- Ed's new status as a supervisor and how this impacts the apparent consensual relationship.
- Impact of relationship on co-workers.
- Discipline or other steps to deal with conflict between Christie's son and Ed's daughter.

# TEN TIPS

## FOR EFFECTIVE MANAGEMENT

# 1

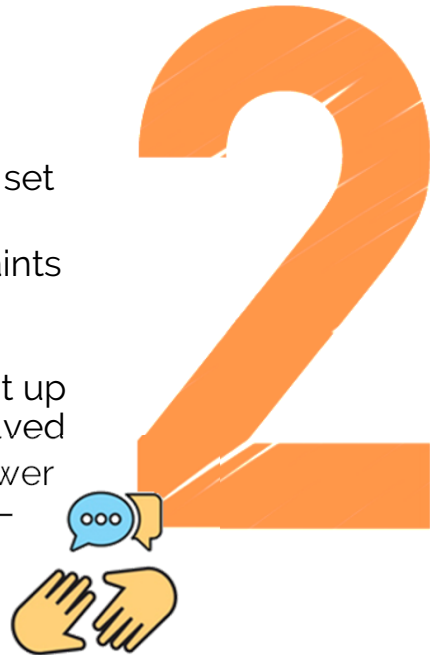
## MAKE YOURSELF AVAILABLE

Let people know of the open door policy. Let them know that if they have a concern, complaint or problem you'll be there to help and that they should come to you.



## TAKE TIME TO ACTUALLY LISTEN

- > Don't put them off; if you're really too busy, set up a definite time to see them
- > Listen to the employee and take all complaints seriously
- > If the issue/problem can't be solved on the spot, say so. Tell the employee you'll take it up with your supervisor, but that it will be resolved
- > Tell the employee when you'll have an answer and be sure to get back to him at that time – **do not fail to respond even once!**



## 3

- > Reprimand employees in private
- > Emphasize what is right, not who is right. Base the decision on Company policy, not the person involved. Be consistent
- > Point to objective facts and policy. Don't justify decisions solely on the basis of "I'm right and you're wrong" or "the boss backs me up 100% on this"
- > **Sell** instead of **tell** – explain why when possible

## REPRIMAND PROFESSIONALLY



## GIVE CREDIT WHEN DUE



- > Don't only concentrate on the negative; use positive motivation
- > Show confidence in your employees and encourage them
- > Compliment employees for work well done
- > See that employees who have done a good job are called to the attention of your superiors
- > Recognize and give credit to an employee who comes up with a good idea
- > When constructive criticism is necessary, try to start and end with positive
- > Encourage – **“let's do this”** and not **“you go do this”**



## GIVE CLEAR DIRECTION

- > In giving directions or making changes, explain the reasons for them
- > Explain in advance and make sure that the employee understands the reasons behind the action
- > Don't give abrupt and arbitrary orders. Be firm, but lead by persuasion rather than through threats





## TAKE AN INTEREST

- › Take an interest in employees' personal lives
- › Ask questions about their interests, families
- › Listen when they bring up personal matters



## BE CONSISTENT

- › Treat all employees in the same manner
- › Be firm, but fair and consistent in your dealings with employees
- › Don't play favorites



## BE A GOOD LEADER

- > Set a good leadership example
- > Don't expect employees to merely do as you say; they will do as you do
- > Employees look to you for guidance
- > Humility – think “you” not “me”
- > Don't use title to show who is in charge – use it to help others succeed



- > If you don't tell them, someone else will
- > Not communicating is communicating something
- > Manage your communications by:
  - > Being first with the information
  - > Let them be in on things that affect them
  - > Let them know reasons why some information cannot be passed on
  - > Be willing to listen
- > Communications must travel down to employees from management, but also up to management from employees

## COMMUNICATE EFFECTIVELY



## BE DIRECT WHEN NEEDED

# 10

- > When disciplining employees or explaining reasons for discipline, don't be overly defensive and don't engage in overkill
- > Cite the specific rule or rules violated, explain why the violation of the rule is serious, and when applicable, cite other instances where discipline has resulted from the violation of the rule so as to demonstrate the Company's consistency
- > Don't try to dredge up every trivial piece of misconduct in which an employee has engaged. Concentrate on "the big picture" and leave it at that
- > If practical, start and close on a positive or optimistic note

**2019**  
**HR FLORIDA**  
CONFERENCE & EXPO

**August 25-28, 2019**  
GAYLORD PALMS & CONVENTION CENTER  
KISSIMMEE, FLORIDA

# THANK YOU

FOR THIS OPPORTUNITY



FISHER PHILLIPS LLP 2019  
RECOGNIZED BY  
**Best Lawyers**

**Jennifer Carroll**  
jcarroll@fisherphillips.com  
954-847-4716



AFFILIATE OF  
**SHRM**  
SOCIETY FOR HUMAN  
RESOURCE MANAGEMENT

[www.hrflorida.org](http://www.hrflorida.org)