

DIFFICULT EMPLOYEE

Managing Using Good Documentation and Communications

Who are your difficult employees? Excellent performers but don't get along well with others. Underperformers who blame others. Some are just negative and disruptive to the workplace.

Best management process: Address employee issues, small and large, in an immediate and positive way, following up with an appropriate writing, ensuring consistency in addressing performance or behavior issues.

Steps for Your Process

- **When an employee first begins to show the signs of a difficult employee** (or if you have just inherited a difficult employee that other managers did not address properly), have a positive, honest conversation about what you have heard and have observed. Listen to employee's version. Outline expectations and a timetable for improvement. Offer resources.
- **Follow this conversation with a positive email** thanking the employee for coming in to talk about how the employee can be a better contributor to the team (or whatever the issue was).
- **Monitor the situation; ask for feedback from others.** Listen and watch for interactions (positive and negative).
- **Follow up with the employee.** Discuss what you have heard. If you've received negative comments, you must address those with specificity (who, when, what, why). Get employee's version. Outline expectations.
- **Follow up in writing.** If the feedback was negative, in your follow up document, (1) be specific about what you discussed the first time; (2) what the feedback was; (3) outline the expectations; (4) be clear that you expect the employee to make immediate and sustained improvement in those areas; and (5) outline consequences. Example: if we continue to have these issues, we will have to discuss whether you are a good fit for our office.
- **Employee Deflection.** Sometimes, the employee will try to deflect and explain the bad behavior to justify it. Listen briefly and then reinforce your expectations. Document this issue.
- **If no improvement, separate.** Continue to address issues in a positive, clear, and written way until you have either improved the person's performance or decided it is time to let him/her go.

Why the Push for Documentation?

Goal. Your goal is to adjust behavior or performance. If the performance or behavior does not improve, you want to have effective documentation in your file to show that (1) you brought concerns to the employee's attention; (2) you were clear and specific about the concerns; (3) you outlined expectations; and (4) you outlined consequences for the employee's failure to improve.

The employer needs a legitimate, non-discriminatory or non-retaliatory reason to terminate. If you are sued for a civil rights violation or if the employee claims you retaliated, you have to show that your termination was for a *legitimate, non-discriminatory reason*, such as failure to perform the job, a conduct violation, etc. You show legitimate reasons through various types of written notice: handbook policies, counseling and coaching documents, performance evaluations, written warnings, email communications, notes from meetings where deficiencies were discussed.

Good faith; fairness. You want to ensure that anyone looking at your processes can see you were fair to the employee.

Notice. You may have to prove that the employee had “notice” of your concerns. This is why you need to have the employee sign the document or evidence receipt of the email.

Consistency. Remember, the hallmark of discrimination is where the employer treats similar situations differently. Have you been consistent in how you addressed this issue when compared to how you treated other employees who have engaged in similar behavior (even if not the exact behavior)?

Resetting Expectations. If you have inherited an employee who has positive documentation in his/her file or the employee has slipped over time and has become a mediocre performer, then you need to reset the expectations by following the guidelines above. The faster you begin this process, the faster you will either see improvement or will be able to separate with a lower risk of claims.

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