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How To Deal With Difficult Employees

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- 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.



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- 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.
- Employees whose poor performance has historically not been managed properly, and whose managers now insist upon termination.

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- 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.



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Best Practices for Managing and Ultimately Terminating “Untouchable” Employees



- Consistent documentation.
- Performance-based management.
- Rely upon well-publicized complaint procedures.
- Managerial training.
- Culture of compliance.
- Apply same standards and have comparative data.

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Best Practices to 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.

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Best Practices to Deal 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.

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Best Practices for Managers



- 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.

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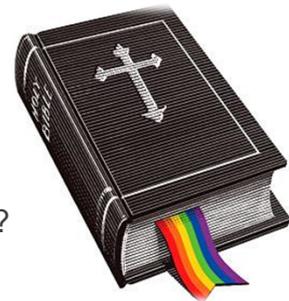
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Scenario No. 1 – The Bible Belt

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As a side gig, 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) your biggest client 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 "heathen" beliefs?



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Analysis and Best Practices

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- 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.

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Scenario No. 2 – Breaking Bad



Rob, a senior accountant, 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 Firm. 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.



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Analysis and Best Practices



- 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 experience?

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Scenario No. 4 – Dirty Documentation

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The director of operations approaches you about a strategy to eliminate the position of Padma, a billing supervisor with 10 years of experience. She is one of only two women in the Billing Department of approximately 15 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.

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Analysis and Best Practices

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- 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.

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Scenario No. 5 – Failure to Disclose




A new car salesman, Larry, reveals he is a Seventh Day Adventist and can no longer work on Saturdays, if needed. 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 schedule could include Saturdays, particularly if the firm is under tight deadlines? If you had told me then, I could have done something about it. We can’t let you have all Saturdays off. Everyone will then want all Saturdays off, and we all know we are gearing up for a huge national class action. 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.

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Analysis and Best Practices



- 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.

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#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.



#2 – Take Time to Actually Listen



When people come in to see you:

- 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 Professionally



- Reprimand employees in private, whenever possible
- 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

#4 – Give Credit When Due



Don't only concentrate on the negative; use positive motivation also:

- 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 – “stroke, poke, stroke”
- Encourage – “let’s do this” and not “you go do this”

#5 – 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

#6 – Take an Interest



Take an interest in employees' personal lives:

- Ask questions about their interests, families
- Listen when they bring up personal matters

#7 – Be Consistent



Treat all employees in the same manner:

- Be firm, but fair and consistent in your dealings with employees
- Don't play favorites



#8 – 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

#9 – Communicate Effectively



- If you don't tell them, someone else will (grapevine, rumors, assumptions, etc.)
- 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

#10 – Be Direct When Needed



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



THANK YOU

FOR THIS OPPORTUNITY

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