

Managing the Challenging Employee and Reducing Legal Risks

Presented by:

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EXPAND YOUR EXPECTATIONSSM

Performance Management: Managing Job Performance and Conduct Issues

You are not:

- Momma
- Buddy
- Shrink



You are:

- A business leader
- A consensus builder
- A problem solver



“NOTE TO STAFF: We’re A Team, Not A Family.”



NOTE TO STAFF: We're a Team, Not a Family

- There are no “business lay-offs” among family
- On a team, roles are defined and respected
- “I am not your mother, I’m the division director. I have a job to do. You have a job to do.”
- Being the leader everyone loves and expecting to make everyone happy is not productive.
- Being comfortable as a leader when you know everyone is not happy is the start of having the right mind set to manage the challenging employee.

Managing the Challenging Employee Requires:

1. Having the Right Mind Set
2. Engaging in Productive Conflict Management
3. Reducing Legal Risks

The Mind Set

- You need this person to contribute to the work at your Company.
- But, you do not have to battle unacceptable performance or behavior day after day after day.
- You do not need to be social friends, you just have to work together to get the job done.

Productive Conflict Management



Step No. 1 – Assess The Source of the Problem

- Lack of skill in the job
- Misplacement
- Lack of job structure
- Incompatibility between employee and employer
- Inadequate supervision
- Emotional immaturity
- Psychological deterioration
- Poor health



Step No. 2 – Separate the employee's role in the business from his/her difficult personality or behavior



How To Make It Work

- Don't get into arguments
- Don't allow yourself to be goaded
- Don't permit your buttons to be pushed
- Don't lose your objective control over the situation
- Don't take it personally, this is business



Step No. 3 – Do Your Homework

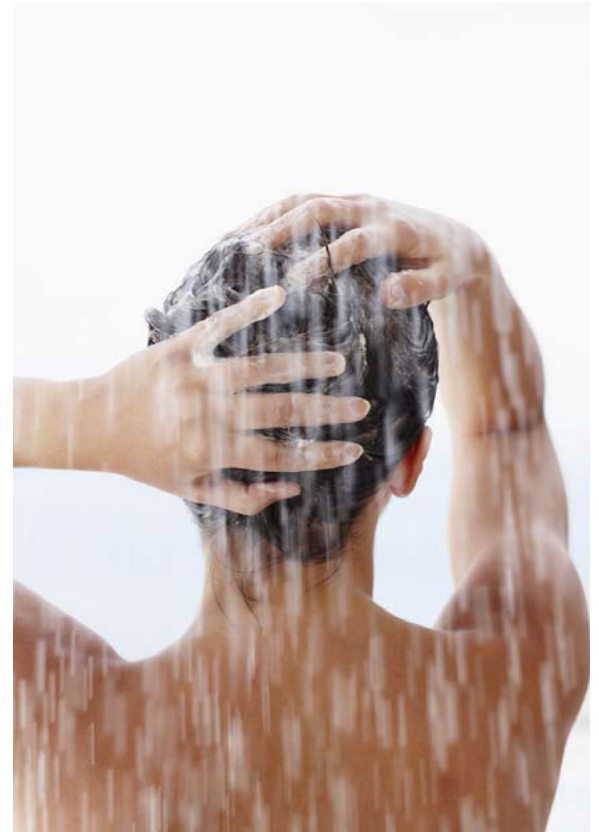
- Act only on the basis of identifiable facts
- Do not act on gossip, unfounded opinions, personal biases
- However, do not use the fact that you haven't personally witnessed the behavior as an excuse to delay addressing the problem.

Step No. 4 –Develop A Plan

- Where and when will you address the behavior
- Who will be present
- What type of documentation will be prepared and when will it be delivered
- What are the consequences of continued poor behavior
- What are the specific expectations going forward

Step No. 5 – Rinse and Repeat

- Consequences become progressively more severe
- Try to impact what motivates the employee to change behavior
- If termination is the best avenue for the organization, then proceed according to typical procedures



Performance Evaluations Are One of the Most Important Tools of Managers and Supervisors in Managing Performance!

A Fair and Effective Performance Appraisal is an Ongoing Process of Communication Between an Employee and their Immediate Manager or Supervisor.

Employee Evaluations

- Plan for Performance
- Set realistic objectives
- Identify and correct problem areas
- Document performance problems – Partner with HR to ensure consistency
- Assess employee potential
- Improve communication
- Assist in compensation and promotion planning
- Motivate Employees – Define what rewards and recognition are most effective – all people are different!

Cardinal Rules

- Evaluations are very important for LEGAL reasons.
- Don't provide ammunition to a disgruntled employee.
- Record any problems with the employee's performance or conduct.
- Record **only** true, relevant and factual information. Avoid inserting personal opinions or expressing personal feelings.
- If you have questions - Partner with HR
- When evaluating attendance – do not make references to employee's health conditions
- Cannot use FMLA leave against an employee

Evaluation Checklist

- Record all instances of misconduct or substandard performance – *there should be no surprises!!*
- Do not change ratings once they are given, unless accompanied by an explanation.
- Complete evaluations on time.
- Make sure the evaluator is the immediate supervisor of the employee being evaluated.
- Make sure any negative comments recorded are made by persons who observed the behavior first-hand or verified with the person who did.
- Make sure all negative comments are job related.

Paul & Patty Puffers

- What's the problem? Boredom on the job, lack of skill, habit, gossip etc.
- Get the facts – days, times, length, number of breaks or problems getting work done etc.
- Give business reasons why the breaks are a problem
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- Define acceptable number/length of breaks
- Explain consequences

Be Ready For Rebuttal

- No law entitles you to smoke breaks
- No constitutional right to smoke
- No, everyone else isn't doing it
- Yes, the Company has a right to limit smoke breaks
- Yes, the Company can limit breaks



Battling Bettys



Taking Charge

- What is the problem? Work related or not?
- Get specific examples of unacceptable conduct including “silent treatment” or lack of respect
- Explain why conduct is a problem for the business
- Set specific expectations for professional behavior
- Explain consequences of failure to get past personal disagreements

Bad Attitude Bob

- What is the problem? Health, boredom, peter principle, family issues, resentment at work etc.
- Point out specific behavior that is not acceptable (rolling eyes in meetings, sighing, not participating in meetings etc.)
- Why is this bad for business
- Make clear change must occur
- Approach subject in a problem solving manner
- Set consequences.

Gary the Gossip

- What is the problem? Not enough work, disruptive personality, not challenged, need for attention etc.
- Emphasize harmful effects of gossip and how rumors can hurt coworkers and increase legal risks
- If the information is false, correct it ASAP
- Be proactive and flood the office with correct information when it comes to Company matters
- Explain consequences and stick to them

Angry Allen

- Examine potential sources of the problem.
- Empathize: “Allen, I know you were frustrated when the deadline was pushed up a week.”
- Discuss specifically what is inappropriate.
- Stand your ground: “If you continue to raise your voice with me I am going to have no choice but to end this meeting.”
- Set expectations: “From now on, I expect you to deal with your feelings constructively and professionally.”
- Explain consequences: “If this continues, I will have to start corrective action process.”

NOTE: Consider seeking professional guidance.

Remember, What Happens Here...



Can Always End Up Here



Managing Potential Legal Issues

- Off Duty Conduct Laws
- Inferences of Discriminatory Treatment
- Claims of Harassment Resulting From Enforcement of Standards
- ADAAA Issues & Misconduct On The Job
- Retaliation Where Adverse Actions Occur Subsequent To Protected Activity
- Common Law Torts – Intentional Infliction of Emotional Distress

Managing the Challenging Employee Means:

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This is not high school. It's your job.



What Questions Do You Have?

