

# Supervisors

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6-point checklist to document better



### Stay Legal!

7 questions to ask yourself before deciding whether to fire someone



### INSIDE

**Documenting bad behavior**

**Race bias costs firm \$250,000**

**COVID-19: It's not all bad news**

**Good worker says she's owed OT**

## When difficult people refuse to change: Key steps to take next

*Dispute over performance leads to age bias lawsuit*

“I’d rather not be working here at all,” Theresa Hancock barked at Supervisor Anna Wilson.

“Well then ...” Anna bit her tongue.

“Look, I know you have a dream about starting your own business,” said Anna.

“But right now you’re still working here, and you need to give bad-mouthing the company a rest, OK? I don’t want you to sour the new hires.”

“Ah yes, the new hires,” Theresa repeated. “You mean the young ones.

“It’s starting to feel a little overcrowded around here,” Theresa said. “Like there

just isn’t any room for us longtime employees anymore.

“And I can only guess who you’d like to push out the door.”

### Plenty of work for everyone

Anna rubbed her temples. “It’s not like there isn’t enough work to go around.

“The problem is I can’t seem to get you to do the work you’ve been assigned.”

“Ah, baloney,” Theresa said. “I’m doing a great job. Always have. Just check out the

*Please see **Difficult people ...** on Page 2*

### Sharpen Your Judgment

## Boss’s promotion pick gets questioned in court

“We need to discuss how you went about deciding who got the promotion in your group and why JoAnn didn’t get it,” HR manager Al Vargas said to Rick Monty.

“Sure,” Rick agreed. “I felt that JoAnn had some problems interacting with people, and that position requires a lot of contact with others.”

“And is it true you got feedback about JoAnn from others in your group, including Sam and Cindy?” Al asked.

“I did ask them what they thought about JoAnn,” Rick said. “But my personal experience with her is what I really based my decision on.”

Al nodded and said, “Let me explain the problem. First, you gave the promotion to someone a lot younger than JoAnn, who’s 63. Second, she

says the two people you consulted made openly hostile comments to her about her age – like calling her ‘mummy’ and ‘dinosaur.’ You knew about that?”

“Yes, but that was during an argument,” Rick explained. “Things got heated, and people said some things they shouldn’t have. That’s all. Besides, I’m the one who made the choice, and I’ve never said or done anything to show bias.”

### Proof of bias

Al responded: “I understand. Still, JoAnn says consulting them and hiring a younger person proves you’re biased.”

When JoAnn sued for age discrimination, the company said she’d been passed over because of poor qualifications, not because of her age. Did the company win?

This regular feature sharpens your thinking and helps keep both you and your firm out of trouble. It describes a real legal conflict and lets you judge the outcome.

*Make your decision, then please turn to Page 4 for the court’s ruling.*

# Difficult people ...

(continued from Page 1)

report I dropped on your desk this morning.”

“And that’s part of the problem,” Anna said. “You’re spending too much time on some tasks and you’re neglecting more important things.”

“Let me put it this way; when you are your own boss, do as you please. But for now, you still need to meet my expectations.”

“But how can you argue with success?” Theresa asked.

“No younger people are doing that well.”

“Theresa, we both know numbers can be bent to say anything,” Anna said.

“Oh, so now you’re calling me a liar,” Theresa fired back.

Anna exhaled and picked up a copy of a review she’d written on Theresa a few months earlier.

It laid out Theresa’s strengths, but also made clear where her weaknesses were, as well.

## Useful documentation

“Here is exactly what you need to be working on,” Anna told her.

“What’s this? An old review?” Theresa asked.

“I have been wanting to bring this up with you for a couple

months now,” Anna said. “And here, this is a written warning.”

Theresa grabbed the paper and read it.

“You have 60 days to get this right,” Anna said.

## Age bias?

A couple months later, when Theresa’s performance hadn’t improved, she was let go.

She sued, claiming age bias.

She claimed she was only let go after the company had hired a number of younger people to do the same tasks she did.

She claimed her reports made clear she was doing better than the recently hired employees.

The company maintained it had terminated the employee for poor performance, and for no other reason.

**Decision:** The company won when the court dismissed the age bias claim.

The court said it didn’t matter how many younger employees had been hired.

And it said the supervisor clearly documented legitimate business reasons for the employee’s dismissal, especially failing to meet expectations.

**Key:** When dealing with difficult people, it’s especially important to stick to documented performance shortcomings.

*Case: Henshaw v. Hartford Insurance.*

### What you need to know:

It’s important to stay objective when difficult people struggle at work. Three things to remember:

- You may want to lay out your expectations more than once. If a situation escalates you can make clear that you gave the person fair warning.
- Refer back to existing documentation. That will help ensure consistency.
- Be sure employees are clear about what, and whose standard of measure is being used. It’s not that they can’t give input, but management has final say on which numbers are essential to business operations, so make clear that employees stick to those standards.

## TEST YOUR KNOWLEDGE

### Best ways to document an employee’s bad behavior

Good documentation is the cornerstone of any supervisor’s strategy when citing an employee for bad behavior.

To test your knowledge of best practices when documenting, respond *True* or *False* to the following:

1. Using a standard form or format to document a behavior problem – listing time, place, description of the incident(s), etc. – has been shown to be a good start for building a case for discipline.
2. Don’t document the details of events/incidents right away. Let the dust settle a bit, and take adequate time to examine the facts before documenting.
3. Don’t share the details and issues cited in the documentation with the employee until the time comes when you’ve decided to discipline the employee.

## ANSWERS

1. *True.* A standardized form/format provides a good building block for documenting bad behavior. Such a form gives supervisors a template to follow and ensures that basic details aren’t overlooked. Of course, it’s likely there will be supplemental documentation, but the basic form/format is a good start.
2. *False.* Details are best recorded when they’re fresh. You can later amend or modify the documentation as more information comes in, but initial details should be recorded as soon as possible.
3. *False.* Subject employees should be confronted with the documentation and asked to sign it as an acknowledgment of the incident(s). You don’t want an employee to later claim, “I didn’t know there was a problem,” when the time for discipline comes.

### Answers to the quiz:

# Where other supervisors went wrong

## News you can use to head off expensive lawsuits

*This feature highlights violations of workplace laws. You can learn how other supervisors got off track, what the mistakes cost and how to avoid them.*

### **Convenience chain pays \$160K for disability bias**

**What happened:** Brown-Thompson General Partnership, which operated a string of Oklahoma convenience stores, fired a warehouse worker and eight other employees with medical conditions who needed reasonable accommodations, including modified duty or an exception to the company's practice of terminating employees who missed more than three days of work and didn't qualify for other company leave. Such alleged conduct violates the anti-discrimination provisions of the Americans with Disabilities Act, which prohibits employers from taking adverse employment actions against individuals because of qualifying medical conditions and refusing to provide reasonable accommodations to employees, which can include modified duty or work schedules.

**Decision:** After paying the nine employees a combined \$160,000, the partnership sold its business and no longer operates the warehouse or chain of Oklahoma convenience stores where the individuals were employed.

**Cite:** EEOC v. Brown-Thompson General Partnership.

### **WA resorts pays \$570K in sex harassment case**

**What happened:** Female employees at Bonneville Hot Springs and Carson Hot Springs Resort and Golf Course, near Carson, WA, endured lewd sexual comments, sexual propositions and inappropriate touching

and groping by the owner of Bonneville Hot Springs. He and his daughter managed the two resorts. The resorts failed to stop the harassment despite repeated complaints to various members of human resources and management.

**Decision:** Along with paying \$570,000 to six employees, the resorts agreed to implement policies and training to prevent discrimination and harassment, retain a consultant to investigate any complaints of harassment or retaliation, and provide individualized training for the owner and general manager.

**Cite:** EEOC v. Bonneville Hot Springs, Inc. and Carson Hot Springs Resort, LLC.

### **Race harassment case costs MS firm \$250,000**

**What happened:** Managers at Prewett Enterprises, Inc., doing business as B&P Enterprises, and Desoto Marine, LLC, Oxford, MS, subjected African American employees to daily harassment and humiliation because of their race by calling them racially offensive and derogatory names.

**Decision:** Along with paying \$250,000, the firms agreed to revise their anti-racial harassment policies; create an 800 hotline number for employees to report complaints about discrimination, harassment and retaliation; and conduct exit interviews of employees who leave the company.

**Cite:** EEOC v. Prewett Enterprises, Inc. d/b/a B&P Enterprises, and Desoto Marine, LLC.

## STOP, LOOK, LISTEN ...

### It's not all bad news in the COVID-19 era

During these stressful and uncertain times, it can be easy to give in to the anxiety.

And while this new normal is difficult to adjust to, there are some ways this pandemic has changed how we work for the better.

#### Calm in the chaos

It might sound crazy, but here's how workplaces have actually been benefiting from all the chaos, according to HR expert and author of Evil HR Lady blog, Suzanne Lucas.

**1. Remote work is being destigmatized.** While a lot of companies have been embracing remote work, many have been resistant.

But the coronavirus has forced employers to allow as many employees to work from home as possible. This, undoubtedly, will be eye-opening for many managers.

Jobs they didn't think could be done remotely are being done remotely. When things go back to normal, a lot of companies may change their stance on remote work.

**2. Some regulations have relaxed.** With many state governments ordering residents to stay at home, certain employment requirements are being waived.

For example, new employees don't need to present ID in person – over email or video is fine.

Telemedicine has also become a popular alternative to in-person doctor visits – a trend that should continue once things go back to normal.

**3. Companies are being more flexible.** Things are the opposite of "business as usual" right now, and employers are adjusting.

They're offering employees more slack as they care for their families while working from home. Some are even stepping up and helping out with this global crisis – alcohol producers are making hand sanitizer, and a few manufacturers are now making ventilators.

## SUPERVISORS SCENARIO

# Starting work early became a habit – until she told her boss ‘I want overtime!’

*She insisted she needed the extra time to get her work done*

“You sure got a lot of work done today and I appreciate that,” supervisor Amy Green said.

“Oh yeah, thanks,” said Heather. “As usual, I had a lot to do so I started a little earlier this morning to make sure I got everything done.”

Amy paused. “I want to make sure you know you won’t get in trouble if you don’t start early,” Amy said.

“It sure feels like I will,” Heather said. “I mean, if I don’t get the work done, I’m sure there will be consequences, right?”

“Well, of course you are expected to do your job,” Amy said.

“Then I don’t see any other option but to start before my actual shift time so I can get the ball rolling,” Heather said.

“But you know you won’t get paid for that time,” Amy said. “How much earlier did you start this morning?”

“About 20 minutes,” Heather said.

“Well, just be sure you don’t start any earlier than that,” Amy told her.

“That’s the earliest,” Heather said.

“And also, I want you to know I do appreciate the hard work,” Amy said.

## Don’t let it become a routine

The more Heather thought about the extra time she put in, the more she felt she should be paid for it.

She ended up suing her employer for lost overtime.

The company argued it hadn’t violated the Fair Labor Standards Act because the pre-shift work was “de minimis,” being 20 minutes or less.

It tried to get the case dismissed.

**Decision:** The company lost.

The court refused to dismiss the case. It said the regularity of the extra time was significant.

**Key:** Allowing employees to do extra work off-the-clock once in a while may not get you into legal trouble.

But if the practice becomes a routine, you could very likely have a problem.

*Case: Miller v. Blumenthal Mills, Inc.*

## What you need to know:

With so many folks working remotely, what steps are you taking to stay on top of workloads?

- Be sure to ask. Workers will appreciate that you recognize their challenges.
- At work, observe their work patterns. If they’re home, watch for what times they communicate thru chat or email.
- Compare them with their co-workers and others who do similar work. Could the load be distributed more equally or could someone else pick up a part of the job?

## Sharpen Your Judgment – THE DECISION

*(continued from Page 1)*

No, the company lost.

The judge said a combination of factors affected the decision.

First, there was the awarding of the promotion to a younger person. That, in itself, wouldn’t have been enough to sway the case in the employee’s favor, but of course there was more.

Soliciting input from two people who had made openly derogatory remarks about the employee’s age raised enough of a question about the fairness of the selection process to lead a reasonable person to conclude that age was a factor in the supervisor’s decision.

True, the supervisor had sole responsibility for the decision, but – by consulting the others – he raised questions about his ability to be fair.

All that, in total, added up to a case of age discrimination.

### One tipping point

As illustrated, often a number of factors can come together to undermine a supervisor’s claim of fairness.

Still, there’s just as often a key factor, maybe a lapse in judgment, that tips the judge’s decision in favor of the employee. In this instance, it was at least the appearance that the supervisor had delegated his responsibility to people who’d shown themselves to be biased. It’s the supervisor’s responsibility to ensure fairness.

*Case: Beecham v. Wyndham Vacation Resorts Inc.*

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