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7 questions to ask yourself before deciding whether to fire someone



INSIDE

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Bike dealer loses big bias lawsuit

Knock out these 4 bad behaviors

Boss pays price for a bad hunch

Boss offered to help, but did worker really meet her halfway?

He claims emotional health problems are to blame

Alicia waited for Mac to sit down, then slid a sheet of paper across her desk. “You need to read this,” she said.

It was a printout of an email to Alicia from one of Mac’s co-workers, Jen.

He picked up the paper. “Yesterday, for no reason, Mac began screaming and cursing at me in front of other employees and customers ...” it read.

He looked up and said, “I can explain the whole thing.”

“Please do,” Alicia said.

“Jen was supposed to fill in for me the day before, and never did ...”

“Hold on,” Alicia interrupted. “We can talk later about anything Jen did wrong. Whatever it was, that’s no excuse for your behavior in front of others.”

“That’s true,” he agreed. “But there’s more to it than that.”

Problems get worse

“I’m listening,” she said.

“You know I’ve had digestive-tract problems for a long time, and they get worse when I’m upset,” he explained. “So the combination of that – the digestive

*Please see **Halfway?** ... on Page 2*

Sharpen Your Judgment

Depressed employee fired for making threats

HR manager Lynn Rondo was heading to the break room for her second cup of coffee when company attorney Eric Bressler caught up with her.

“Hey, Lynn, I’m glad I found you,” Eric replied as they entered the break room. “I wanted to talk to you about Delilah Potts.”

Lynn frowned. “How’s she doing? I’ve been worried about her.”

“I think she’s doing better. She’s in intensive therapy,” Eric replied. “But she’s suing us for firing her.”

Safety concerns

Lynn stared wide-eyed at Eric. “Are you serious? We had no choice,” she said.

“Walk me through what happened,” Eric said.

“A few years ago, Delilah was diagnosed with major depressive disorder,” Lynn said. “She opened up to me about her struggles and suicidal thoughts, but she was in treatment. She was doing well.”

“What happened?” Eric asked.

“She began threatening to kill herself and her son,” Lynn said. “We were so worried for her safety and her son’s – not to mention the safety of our employees. We had to let her go.”

“Delilah is saying the depression made her say those things, and we’re violating the ADA by firing her for it,” Eric replied.

When Delilah sued for an ADA violation, the company fought to get the case dismissed. Did it 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.

Halfway? ...

(continued from Page 1)

and the emotional problems – cause me to lose it sometimes.”

“I’d say you ‘lose it’ a lot, and that’s one of the reasons we’re having this talk,” she observed.

“You’ve screamed and cursed at people often here, even at me. We can’t let this go on.

“And more than one person here has noted that your behavior has been a little strange overall – like talking to yourself loudly and forgetting to attend important meetings.”

“That’s all part of the emotional problem,” he said. “What else can I say?”

“All right,” she concluded. “I’m not telling you how to deal with your health, but you have to get a grip on this thing. See your doctor, and I’ll help in any way I can, but you have to meet me halfway.”

He nodded in agreement and said, “OK.”

No other choice

A week later they met again. Alicia spoke first: “I witnessed you cursing loudly at a co-worker again. I have no choice but to let you go.”

“But what about what I told you about my health?” he protested.

“That’s simply no excuse for your behavior,” she said. “It’s not as if

you have a doctor’s note asking us to excuse you from being civil to your co-workers because of your stomach ailment.”

“But I have emotional problems, too,” he said. “I told you that, and you’re the one who said I was acting ‘a little strange.’”

“That excuses nothing,” she said.

He sues

After the termination, Mac sued the company for violation of the Americans with Disabilities Act.

He produced medical documentation verifying that he suffered from depression. He said his supervisor should have recognized that based on his behavior and their conversations.

The company said the supervisor was unaware of the depression and couldn’t be expected to make a decision based on it.

Decision: The company won. The court agreed that

the supervisor couldn’t be expected to make a medical diagnosis without the full information and cooperation from the employee. Just saying there was an “emotional” problem wasn’t enough.

Key: The supervisor gave the employee every opportunity to discuss the problem and provide information that might have led to an accommodation. The employee was the one who failed to respond.

Case: Kerr v. Curators of the Univ. of Missouri.

What you need to know:

What do you do with an employee who is not forthcoming about a disability?

- Make the conversation about performance; you should inform the employee about failing performance and ask what’s needed to aid improvement.
- Once the employee opens up, seek an accommodation that’s reasonable for the employee and the company, while including HR in the discussions.
- If the employee refuses to open up, you’re expected to proceed as you would with any poor performer, again including and consulting with HR about it.

TEST YOUR KNOWLEDGE

Is your staff afraid to be honest with you?

If you’ve ever felt the need to cajole an employee into being honest, there could be a larger problem at hand. It might be that members of your team are afraid to be totally honest with you.

To test your knowledge of how to put them at ease, respond *True* or *False* to the following:

1. A downside of optimistic, “can-do” cultures is that they can create fear in employees that they need to constantly over-inflate and exaggerate results.
2. If your team constantly gets the message that negative opinions, are best left unsaid, a lot could go wrong right under your nose that would have otherwise been avoided if you’d just encouraged your team to speak up.
3. Just because everyone “knows” what’s going on, that doesn’t mean a supervisor needs to bring it up.

ANSWERS

1. *True.* Some companies pride themselves on their optimistic, can-do cultures. So when someone offers up a more realistic perspective, they can be admonished for not being a team player and told to “get on board.” Managers should do their best to let their teams know that sometimes, bad stuff happens, and they should feel free to tell you.
2. *True.* Employees could be hiding real problems that could end up putting your entire department – and the company’s well-being – at risk. Even if the upper execs push a positive-only atmosphere, managers should be the front-line sounding board for employees.
3. *False.* It’s called “talking about the elephants in the room” or bringing up the uncomfortable thing on everyone’s mind. For a culture of openness to flourish, it’s always a good idea to address these obvious issues no one wants to talk about.

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.

Pharmaceutical firm out \$150K for disability bias

What happened: Lonza America LLC, a New Jersey-based company in the pharmaceutical and medicine manufacturing industry, terminated a 14-year employee at its Charleston, TN, plant after the employee twice tested positive for a legally controlled substance.

The EEOC alleged that although Lonza later learned that the employee was a recovering opioid addict participating in a medication-assisted treatment program with a legal prescription for an opioid medication, Lonza forced him into counseling with a clinical psychologist.

Lonza also conditioned the employee's return to work on his discontinued use of the legally prescribed medication.

Decision: Along with paying \$150,000 in damages to the employee, Lonza agreed to provide ADA-related training.

Cite: EEOC v. Lonza America LLC.

Harley dealer loses \$500K jury verdict for sex bias

What happened: Cigar City Motors, Tampa, refused to promote a well-qualified female sales manager to general manager because the leadership team felt she was "too motherly" for the job.

Several former Cigar City general managers testified on the sales manager's behalf, and told the jury that she was qualified, and confirmed the "too motherly" sentiments.

Decision: The Tampa jury of eight

returned a unanimous verdict finding that Cigar City was motivated by gender in denying the promotion and awarded punitive damages in the amount of \$500,000.

Cite: EEOC v. Cigar City Motors.

Coal company pays out \$50K for retaliation

What happened: Southern Coal Corporation, Kentucky Coal Transport, LLC, and Tams Management, Inc., of West Virginia, retaliated against one of its truck drivers because the driver was testifying against a prior employer, also a coal company, in an EEOC discrimination case.

According to allegations made in the case, after a supervisor learned the driver was testifying against another coal company, the supervisor took a series of retaliatory actions against him, including telling him he should never testify against a coal company, requiring him to transfer to a remote worksite as a condition of continued employment, firing him, and failing to recall him for later opportunities.

Decision: Along with \$50,000 in monetary relief, the consent decree enjoins the companies from future retaliation against any person because he or she has opposed unlawful discrimination or participated in an investigation, proceeding, or hearing under Title VII.

Cite: EEOC v. Southern Coal Company, et al.

STOP, LOOK, LISTEN ...

Knock out 4 bad behaviors

As an HR leader, you want to create a positive company culture, but some people's behavior works against it.

Nearly 80% of employees say respect and civility are issues in their workplace.

Heated political conversations

Many employees have never heard – or just don't heed – the informal cocktail party rule that applies to work: Don't discuss politics, religion or money.

News and social media get some people fired up. Then they engage with others who have opposing views. Then neither side will back down, despite being disruptive, popping veins and getting nowhere fast.

What to do: Stop them before it gets worse. Managers want to end any disruptive conversation immediately before it affects other employees.

Gossip

People who gossip at work hurt morale, impede efficiency and can derail progress.

Reduce harmful gossip by feeding the gossip mill with reliable information.

Shirking responsibility

Some employees will just avoid doing what they're supposed to do. Others will blame colleagues when things go wrong. And some will even weasel co-workers into taking on their duties.

It all comes down to shirking responsibility, which can lead to deeper conflict, hurt feelings and low morale.

Bullying

Bullying comes in many forms – such as belittling, sabotaging, pranking and over-demanding.

What to do: You'll need to immediately investigate bullying reports because bullying can easily rise to the level of illegal harassment.

To avoid or curb bullying behaviors, make cooperation, collegiality and inclusion job requirements.

SUPERVISORS SCENARIO

Supervisor on the hot seat trying to get to the bottom of an apparent workplace theft

Boss pays the price for acting on a hunch

“Hi Cheryl, I’ve been waiting for you,” said Supervisor Barb Bowie. “We need to talk before you get started.”

“Waiting?” Cheryl said, her voice rising. “I come in at the same time every day.”

“I have a question about your drawer,” Barb said. “It was \$10 short yesterday.”

“Short? Not a chance,” Cheryl said confidently. “I count twice before I turn it in. I always do that.”

“There must be some mistake.”

“I don’t think there has been a mistake,” Barb said. “You know we have very strict rules about theft here.”

“And I’m not suggesting you’re a thief,” Barb added quickly. “But people need to know there are consequences when something like this happens.”

“There has to be some sort of mix-up,” Cheryl said. “Maybe you should look into this more thoroughly.”

“I went through all the drawers very carefully,” Barb assured her. “I even talked with the others and all I learned was that someone saw you with a ten dollar bill in

your hand yesterday.”

“I did have ten dollars, but it was mine,” Cheryl insisted. “Do you really think I’d risk my job here for ten lousy bucks?”

“There’s a first time for everything,” Barb said. “Given what I’ve learned, I have to let you go for stealing.”

Claims misconduct

Cheryl applied for unemployment, but the company fought her claim. They said she was let go for misconduct and shouldn’t be awarded the benefit.

Decision: The firm lost when the state unemployment review board ruled the firm lacked “competent and substantial evidence” that the employee stole the money. That she actually may have had a ten dollar bill in her hand was, at best, hearsay.

Key: When taking disciplinary action, it pays to be sure the facts are not in dispute and that the evidence supports your actions.

Case: Jenkins v. George Gipson Enterprises LLC.

What you need to know:

You want to trust employees. But the fact is, workplace theft is fairly common. If you launch an investigation:

- assign an unbiased person to take the lead
- assure everyone that the process is confidential
- collect any evidence (security camera footage, expense reports, etc.) that might point to any wrongdoing, and
- make your decision with conviction – and don’t be afraid to have security (or the police) escort the employee out of the office if necessary.

Sharpen Your Judgment – THE DECISION

(continued from Page 1)

Yes. The company won when a court dismissed Delilah’s ADA lawsuit.

Delilah’s attorney tried to argue the company violated the ADA because Delilah only made those threats due to her diagnosed depression.

The company was aware Delilah had mental health struggles and should’ve tried to accommodate and assist her before termination.

The court disagreed. It said the company had supported Delilah when she was first diagnosed with her depression, and showed no bias against her and her condition.

The court went on to say that Delilah’s threats were severe, and the company was rightfully concerned about workplace safety.

Threats of violence, no matter who makes them, are a legitimate reason to fire someone.

The company didn’t violate the ADA, the court ruled.

Threats rarely protected

This case goes to show that threats of violence don’t ever have to be tolerated in the workplace – even if a person’s disability is the reason behind the threats.

Workplace safety always comes first.

Courts will generally side with employers who act reasonably after a threat has been reported.

Cite: Todd v. Fayette County School District.

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