

# The Employment Review: Strategies for Addressing Difficult Employees and Minimizing Risk

Presenters:

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# Introduction

“I am **Russell Berger** and I ensure business owners are confident in their decision-making and feel secure with their assets.”



“I am **April Rancier** and I vigorously defend companies against class action and individual lawsuits filed by disgruntled employees.”

# Passive-Aggressive Employees – Common Issues

- Manipulate others into doing their work
- Avoiding responsibility
- Inefficient or procrastinate on purpose
- Inability to engage in healthy confrontation
- Retaliatory
- Setting up colleagues to fail/subterfuge
- Ignoring chain of command/tattle-tail



# Passive-Aggressive Employees: Strategies

- Identify the problem behavior
- Use facts and examples
- Explain why it is problematic
- It is important to be open, honest, and direct since this is the behavior you are trying to get the employee to adopt.
- Don't get sucked in/stay calm
- Set limits Encourage active problem-solving

# Drama Queen/King – Common Issues

- Highly sensitive
- Victim mentality
- Turns every new company policy into an “issue.”
- Likely to file HR complaints
- Distracts themselves and others from working

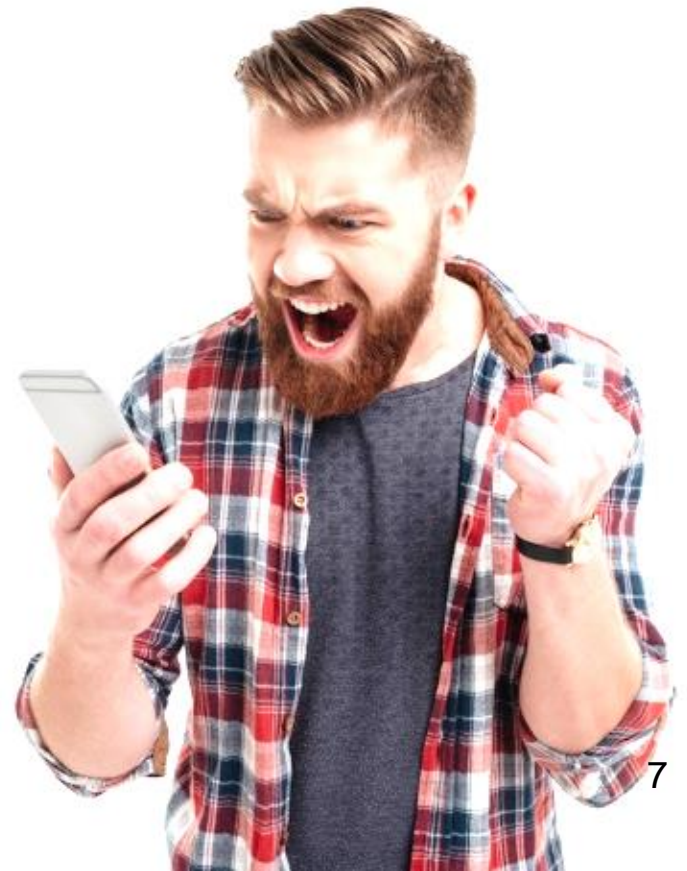


# Drama Queen/King - Strategies

- Clarify roles and responsibilities
- Have the difficult conversation
- Set boundaries
- Document any complaints filed

# Aggressive-Aggressive Employees – Common Issues

- Controlling
- Raised voice
- Talking down to other employees
- Directly complaining
- Disagreeing/ not accepting coaching
- Challenging managers



# Aggressive-Aggressive Employees – Strategies

- Keep calm
- Don't feed the fire
- Be firm and assertive
- Set expectations and impose consequences
- Let them calm down before have a discussion
- Acknowledge the important substantive points made
- As unpleasant as it may be, deal with it



# Social Media Gurus – Common Issues

- Posting confidential company information
- Making disparaging posts about company
- Making posts that “on behalf” of the company
- Making TMI posts about personal life
- More interested in social media than working

# Social Media Gurus – Strategies

- Written social media and computer use policies - must be compliant!
- Follow disciplinary procedures



# Annual Reviews

- Are they completed timely?
- Are they accurate?
- Are they complete?
- Are they a surprise to the employee?
- Are they constructive?
- Do they include future goals?
- What about self-evaluations?

# Investigations

- Investigations into allegations of employee misconduct should be maintained in its own file.
- This investigation file should be kept confidential.
- While discipline resulting from the investigation should go in the personnel file, the details of the investigation should be kept separate.

# Investigation – Documentation

- Are you using a form/uniform language?
- Avoiding unnecessary commentary?
- The 4 W's - Who, What, When, and Where

What if the employee refuses to sign?



# Performance Improvement Plan

- Explain the problem
- Develop a plan to resolve the problem
- Meet with the employee
- Build in checkpoints and follow-up on a regular basis
- Reevaluate, reassess, and revise

# Last Chance Agreement

- Used in lieu of termination
- Unless clearly communicated expectations are met, the employee will be terminated
- Sets a deadline for compliance



# Severance Agreements

- With problematic terminations, consider a severance agreement.
- While this means that you have to compensate the employee you want to terminate, sometimes buying peace is the best course.



# Severance – Necessities

- Include a general release of claims
- Statement of receipt of full compensation (FLSA)
- ADEA release language
- Incorporate references to relevant employment documents, such as restrictive covenants

# Severance – Nice-to-have

- Confidentiality/Non-disclosure
- Non-disparagement
- Additional restrictive covenants



# Types of Documents that May be Helpful

- Written performance evaluations
- Disciplinary records
- Attendance records
- Performance Improvement Plans
- Emails, complaints, other correspondence
- Investigations
- Existing Employer Policies
- Last Chance Agreements
- Severance Agreement

# Questions? Contact Us



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