

No Naysayers Here: How to Fire a Toxic Employee

Every manager has run into them – the toxic employee. When you hire them, their credentials are stellar and they look like a star performer. Once they are on the job, they suck the air out of the room. They can be backstabbers, climbers looking to sabotage coworkers on the way to the top, gossips who start rumors that disrupt corporate harmony and productivity, or worse. Even a cranky employee who complains all the time and demeans his or her coworkers can poison an otherwise productive workplace.

What do you do?

In states such as California, we have [“at will” employment](#), which means that either party (the employer or the



employee) can break the employment contract without consequences, assuming there is no written contract defining a definite term of employment. That being said, you don't want to open yourself to a lawsuit, especially if the problem employee is a member of a minority, pregnant, or in some way can be considered a minority. Also, if they are returning from a leave of absence, you want to make sure you don't seem to be retaliating for their legal right to time off as defined by the [Family and Medical Leave Act](#) or [Americans with Disabilities Act](#). You want to avoid any appearance of discrimination, so it's always a good idea to build a case against a problem employee, point out their specific performance issues, and give them a chance to change.

So to protect yourself, follow the following process to deal with a problem employee:

1. Schedule a meeting to review the behavioral problem. Whatever you do, don't have this meeting alone with the problem employee. Have a witness in the room who can verify what is said by whom. You want the meeting to be in private, and discrete, but you need to make sure to cover yourself in the event of repercussions later.
2. Outline the problem in explicit, specific terms. Don't use vague accusations such as “you're

creating a problem.” Instead, use specific examples of inappropriate behavior, such as, “you called Wendy stupid in a staff meeting,” or “you yelled at Steve in front of a client,” or “your personal conversations are disrupting other employees from doing their job.” You want to be specific so you can ask for remediation and be able to assess any change in behavior.

3. Is this the first time you have had to address this problem? If it is, chances are the offending employee will express shock and dismay and become very defensive and point out his or her accomplishments.

4. Acknowledge those accomplishments. Make it clear that you are not questioning job performance but attitude.

5. Don't be defensive. It's easy to get caught up in trying to defend your actions. Don't. Restate the problem and expectations to make a change.

6. Document it. Prepare a written synopsis of the meeting and its outcome. Be sure to include what the employee has done wrong, how they need to behave differently, how performance will be measured, and what the consequences will be if there isn't a noticeable improvement.

7. Hold follow-up meetings. Schedule meetings at regular intervals to review progress. Be sure you have your witness present and refer back to the previous discussions.

8. Be prepared to acknowledge improvements. If you offered 30 days to show positive change and the employee showed change, acknowledge it. If you terminate the employee now it's a lawsuit waiting to happen.

9. If there is no positive change, terminate the employee. Terminate that employee at the end of the probation period; don't delay even a day. Also be sure to terminate that employee in a straightforward manner. Reiterate that the employee has been on probation, she failed to accomplish the changes promised (present the documentation), so this is his or her last day.

10. Get them to leave immediately. Ask if they need help packing their belongings? Don't hover unless you feel there is a risk, but be clear they must leave right away.

11. Once the employee has left, be sure to tell the entire staff that he or she is gone. Don't leave people guessing. Be positive and be clear, and don't criticize his or her performance in a way that could leave you open to legal action. For example, “Today is John's last day. We wish him well in his new endeavors and will be seeking a replacement. In the meantime, we would like you all to be prepared to pitch in to cover his responsibilities.”

One consideration is whether to provide a generous severance package. You might consider a four or six-week severance to be given when the employee signs a release form. The objective is to

make sure the employee doesn't feel too slighted and to head off any potential legal action. People tend to behave better when they are treated fairly, and consistently. You are at greater risk if you don't lay out a clear path to correct a problem, and then be consistent in managing the situation. If you change your mind or don't provide clear guidance, then you aren't being fair.