

A Manager's Guide to Overcoming Negativity in the Workplace



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OVERCOMING NEGATIVITY IN THE WORKPLACE

Personality conflicts, interpersonal friction, bad attitudes ... normal, everyday, run-of-the-mill negativity with which just about every manager must contend. But for such a prevalent problem, many managers are not equipped with the solutions to handle or avoid negativity that may seep into their departments.

A negative attitude that starts with just one employee can easily infect a department, even an entire company, if not reined in quickly. When it becomes this prevalent, you may experience any or all of the following.

1. Negativity is a barrier to positive change.
2. Negativity blocks productivity.
3. Negativity kills morale, which further reduces productivity.
4. Negative thoughts are generally self-fulfilling; therefore, the chances of failure occurring in a department or company steeped in negativity are greater.

Your managerial goal isn't to banish all negative thoughts from the workplace. There is a difference between "good" negativity and "bad" negativity. The negativity you want to get rid of is the kind which merely forecasts doom and gloom, but does nothing to help you avoid it or get rid of it. On the other hand, having someone play "devil's advocate" can open your eyes to potential problems or new ideas. You can use negative analysis to identify problems and find solutions.

It pays to turn a negative attitude around. Not only for efficiency and productivity...but because one wrong move, and your company could find itself face-to-face with a discrimination lawsuit (*see page 12*).

20 NEGATIVITY RED FLAGS

Gripes, conflicts, and a certain amount of negativity are commonplace in all environments. However, when they severely infect the workforce, you might feel like a David facing a mighty Goliath of a problem. So it would be wise to keep an eye and an ear open for signs of negativity in the workplace before you're hit with decreased morale and productivity, and increased stress, friction and turnover.

These are some common signs that pessimism is becoming a problem that needs to be dealt with quickly:

- increased complaining
- focus on why things can't be done
- lack of hope that things can or will get better
- normally positive people exhibit atypical negative behavior
- insistence on perfection rather than excellence
- denial of reality
- inability to cope with growth or downsizing
- excessive need to control
- the tendency to lay blame rather than problem solve
- rigid either/or approach to problem-solving

- unwilling to change, even if for the better
- prefer confidential or need-to-know information
- acting with uncertainty
- expressing dissatisfaction
- giving a perfunctory performance, showing no life or spark
- anti-management sentiments
- job loss fears
- boundary issues, constant challenge of authority
- relying on news from the “grapevine.”

RUMORS AND THE LAW

That last red flag, rumors on the grapevine, can be both a practical and legal headache when negativity invades a workplace.

Example: An employee became privy to a rumor about her being incompetent and owing her current position to an affair with the head of her department. But the negative effects of this rumor didn't hit her until she read about it in a union newsletter. As a result of the rumor, the employee claimed that she received negative performance reviews, her professional reputation was ruined, and she was demoted. So she sued the union.

The union responded by saying that it couldn't be guilty of sex discrimination because the rumors were true.

However, a court disagreed, stating that the union based its argument on documents that were outside of the record instead of looking at the employee's emphatic denial of the negative rumors, which were in the record. Therefore, the employee can move forward with her claim of

sexual discrimination. (*Gillen v. Borough of Manhattan Community College, City University of New York, and Professional Staff Congress/CUNY*)

Although you can't prevent workplace gossip, you can prevent negative rumors from wreaking havoc on productivity and company morale. Take these steps to control the rumor mill in your company.

- 1. Pump as much accurate information as possible** into informal channels of communication, using spontaneous meetings, lunches, and even social events to get the company's messages out to its workers.
- 2. Provide employees with clear and honest communication**, even if the news is negative.
- 3. Use formal methods of communication — newsletters, memos, bulletin boards — to spread information.** Copy appropriate manager information to give to an entire department.
- 4. Let employees know that they have a place to go with concerns and questions**, so they will not turn to the company grapevine for information.
- 5. Appeal to employees' sense of fair play.** Discourage the spreading of harmful rumors without sounding as though you're trying to prevent employees from conversing with one another altogether.

HOW TO REIN IN A NEGATIVE EMPLOYEE: DO'S AND DON'T'S

“Negative” employees can come in many different manifestations. When an employee constantly exhibits pessimistic, angry, hostile, or uncooperative behavior, they need to be managed. Your actions can either make the

situation worse, or help the employee act in a more positive, productive manner.

Try using these tips for when you must confront an employee whose negative behavior is affecting the department, company, or other workers.

- **DO be conscious of getting drawn into the employee's negative mind-set.** Listen to his/her points, but don't temper your own realistic optimism.
- **DO avoid getting into an argument.** Negative individuals thrive on the negative energy of arguments. Point out areas of agreement when possible in order to build rapport.
- **DO be prepared to make tough choices.** Sometimes you have to pick and choose your battles, and realize that it's not realistic to win them all, nor is it necessary.
- **DO keep your cool.** Your negative or angry attitude will only escalate the employee's, which will prevent you both from communicating effectively and productively.
- **DO spell out the consequences of negative behavior,** such as decreased morale. Stress that all employees are held to a high degree of professionalism.
- **DO get to the root of the problem** or issue at hand by asking plenty of questions. Force the employee to be specific, and to support his/her negative contentions.
- **DO try role-playing.** Ask the employee to put him/herself in your shoes and pretend that he/she has been asked to resolve the problem. That way, you will have the employee contribute his/her ideas for the best possible solutions.

Involving the employee may also lead to more positive feelings about the

solution or outcome since he/she had a hand in creating it. When you dictate the "right" answer, it's too easy for employees to blame you if it doesn't work, and/or get up in arms for being "forced" into an agreement.

- **DO use "I" statements instead of "you" statements.** You won't be perceived as launching a personal attack or becoming confrontational.
- **DO listen carefully.** Use active listening to ensure that you are understanding the employee correctly.
- **DO discuss the worst possible scenario.** This tactic could help you learn what the employee fears most, and what his/her negative attitude stems from.
- **DO empower employees.** Stop the "victim" mentality from forming. Allow employees to take responsibility for "good" events, so they can make them happen again; and for the "bad" events, so they have the power to change them or avoid them in the future.

WHAT NOT TO DO (HOW TO ENCOURAGE NEGATIVITY)

There are certain actions which managers can take that will only encourage negative behavior. In addition to following the prior "do's," make sure you avoid these "don'ts."

- **DON'T shower negativists with lots of attention.** You're only rewarding bad behavior.
- **DON'T stop asking them to pitch in** and do tasks outside their normal job descriptions. Otherwise, you're also punishing positive (or less vocal) employees by handing the extra work to them.

- **DON'T lower your expectations of them.** A negative attitude doesn't necessarily mean a poor performer.
- **DON'T correct them less often** in order to avoid dealing with the attitude. Employees can't be expected to change for the better if they're not asked to.
- **DON'T allow negative employees to commiserate without any intervention.** Managers must strive to prevent negativity from spreading.
- **DON'T allow employees to get bored or complacent.** A negative attitude develops easily when there's nothing to "look forward to."

CONTROL NEGATIVITY BEFORE IT SPREADS

Besides dealing with employees on an individual basis, you should have tactics prepared for handling your department as a whole in order to stem the negativity tide from washing over all your employees.

- **Communicate.** Make sure employees know that you have an "open door" policy, that you are willing to share what you know about occurrences in, around, and about the company to the best of your knowledge and ability. This will also help feed information into the office grapevine, which can help negate rumors and false information.

Gossiping is also harmful since it tends to focus on the negative aspects and on only one side of the story, perhaps making the situation worse. And gossip isn't gossip unless it's spread among a group of people, meaning that the more gossip there is, the more negativity is getting spread around.

- **Participate.** The more you listen to employees, and take an active interest in

their concerns, the less likely they will be to complain to each other.

At the same time, make employees part of the goal-setting process, so they won't feel like they're just being ordered around.

- **Set standards.** Base them on behavior, not attitude. Realistically, you can't control an individual's thought processes. However, you can control negativity somewhat by consequencing behavior.

For example, you may not be able to change the fact that an employee doesn't like a particular company policy, but you can emphasize what disciplinary measures may be doled out if the policy is not followed.

- **Hire right.** Identify negative individuals before they land a job in your office. During the job interview, listen for feelings that "life isn't fair" in response to the following questions.

a) Have you ever felt you've been treated unfairly in the past? Why? How did you react?

b) What were your chief concerns about management in your previous jobs?

c) If given the chance, what would you have changed if you were the manager at your last job?

STAMP OUT MINOR CONFLICTS BEFORE THEY ESCALATE

Rampant negativity does not develop overnight. Such an attitude tends to grow over time, over a number of minor incidents. Therefore, you may be able to prevent negativity from affecting your workplace if you can nip these negativity-inducing situations in the bud before they fester and get worse. These are actions you should avoid.

- Ignoring minor problems.
- Approaching a problem in a confrontational, instead of a problem-solving, manner.
- Talking about a problem to those without a need-to-know, or those who tend to gossip.
- Failing to recognize any part that you may have in the situation.
- Attempting to get others to see things your way — about everything.
- Refusing to seek help when it is needed.
- Failing to set limits and specify consequences for poor behavior.
- If necessary, postpone the meeting until everyone has had the opportunity to consider the issues at hand at greater length.
- Have your facts ready. Be armed and ready with factual support.
- When too many debates are springing up and interrupting the flow of the meeting, have individuals submit their thoughts in writing.
- Aim for compromises which are win-win situations. Stay flexible in case one idea doesn't work, so another will be attempted.
- In some situations, it may be best to turn a conflict among employees into a non-issue by having a higher authority make a decision.

OFFSET NEGATIVITY IN MEETINGS

What if the negativity has already spread through your department? One negativist in the bunch is bad enough. But what happens when more than one get together, say, in a departmental meeting. Here's where your managerial skills will be put to the test. Take these steps to keep negativity from tainting important work meetings.

- Get feedback on issues you will bring up at the meeting *before* it starts. Not only will you hear, and thus be able to counter, criticisms before the official meeting, but you may also be able to drum up support at the same time.
- Clearly set an agenda, time limits, and other ground rules for your meetings, and then make sure you stick to them.
- Try to get consensus on each issue before moving on to the next issue.

THE NEGATIVE BOSS

Sometimes the negativity you encounter may come from above. Dealing with your boss' negative attitude is not quite the same as managing your employees' negativity.

In any situation where you're dealing with a negative individual, communication is a very important ingredient to your success. Be clear, concise, and candid. Don't try to compensate for your boss' negative attitude by sugarcoating everything. Mix the positives and the negatives — but start with the positives!

Also, use "I" statements to assert yourself, and avoid using "you" statements with your boss, because they come across as aggressive.

Other times, you may find your best bet is to just work around them. Don't try to bulldoze your way through your boss and his/her attitude. Nor should you kowtow to the negative frame of mind. Instead, know when to go for forgiveness (e.g., if you make a mistake) rather than for permission.

And if worse comes to worse, move. Not necessarily to a new job or department, but at least find another member of management to be your mentor or cheerleader if your direct supervisor isn't cutting it.

BANISH NEGATIVITY FROM YOUR OWN MANAGEMENT STYLE

A negative attitude does not stem from a particular event. Events are typically neutral until you impose your own interpretation or belief system.

For example, you submit a proposal to your boss that you've been working on assiduously. You gave it to her last week, but she hasn't gotten back to you with any feedback (neutral event). You could come to the conclusion that she hated your ideas (negative interpretation), and let it undermine your confidence in your abilities (negative consequence). Or you could presume that she has more pressing matters to attend to before reading your proposal (neutral/positive interpretation), and get on with your normal daily activities (neutral/positive consequence).

Therefore, in order to change or avoid negative consequences, you must alter negative thinking patterns. Remember that you are in control. Follow these steps the next time you find yourself turning a potentially neutral situation into a potentially negative one.

- 1. Listen.** Learn to assess your thought processes. For example, to what extent are you taking on someone else's viewpoint? Evaluate what's motivating you to think in a negative light.
- 2. Red flag.** Figure out what you're having a negative reaction to, and in what ways it's manifesting itself. Mentally flag the words, situations, or behaviors.
- 3. Stop.** Banish those particular words from your vocabulary. Prevent yourself from getting into similar straits. Avoid repeating the behavior.

- 4. Convert.** When negative thoughts arise, substitute positive images before you act or speak.
- 5. Reorient.** Instead of honing your ability to see what's wrong with the world, start thinking like a problem-solver.

The same goes when dealing with negative people who may tend to put down you or your work. In reality, the words someone speaks to you don't necessarily have to affect how you feel. Instead, it's what you feel about yourself that's more important.

Try this experiment. If employees complain to you that you never acknowledge any of their praiseworthy acts, would your reaction be negative? If you said no, it's probably because you know that you make it a point to say "thank you" and "good job" every chance you get. But if you said yes, chances are, it's because you have some doubts as to whether you're doing a good job giving your employees positive feedback.

So if the latter is true, turn the "put down" into a positive experience. Look at it as feedback, and as a way to improve yourself.

POSITIVELY POSITIVE

Speaking of adopting a more positive management style of your own brings to mind a story on "attitude" that has made the rounds on the Internet.

Seems there was this manager — let's call him Harry — who was always upbeat. His standard reply to "How are you doing?" was "If I were any better, I'd be twins."

Maybe not the kind of person you want to see before your first cup of coffee in the morning, but certainly an asset to negating any negative energy that might invade a workplace.

Anyway, Harry was asked what made him so positive. He replied: "Every morning I wake up and I have two choices. I can choose to be in

a good mood, or choose to be in a bad mood. I choose to be in a good mood.

“Each time something bad happens, I can choose to be a victim, or I can choose to learn from it. I choose to learn from it. Every time a negative person comes to me complaining about something, I can choose to accept their complaining, or try to explain a positive angle on the situation. I choose to emphasize the positive.

“Life is all about choices. Every situation is a choice. You choose how to react. You choose how people will affect you. The bottom line is you choose how to live your life.”

Years after this conversation, another Harry story emerged. Seems he was held up at gunpoint, and shot. When asked later what he thought about, he replied: “As I lay on the floor, I remembered that I had two choices. I could choose to live or I could choose to die. I chose to live.

“But when I was wheeled into the emergency room, I could see the expressions on the faces of the doctors and nurses. They thought they were looking at a dead man.

“So when this nurse started asking me questions, and got to the one about allergies, I yelled ‘yes, I’m allergic...’

“Everyone stopped for a moment, and I continued ‘...TO BULLETS.’ They laughed, and I said: ‘I’m choosing to live. Operate on me as if I am alive, not dead.’”

Harry went through 18 hours of surgery and pulled through. Partly through the skill of those emergency room people. And partly, he believes, because of his attitude.

8 TIPS FOR TURNING AROUND A NEGATIVE ATTITUDE — FAST

Neutralizing a negative attitude — within yourself or an employee — takes time and plenty of effort. However, another aspect of turning around negativity lies in the little things

you do, which may just be what you say or how you say it, without being a direct “negativity-buster.”

- 1. Acknowledge that negativity exists.** That is the first step to working toward changing it. Once you identify it, you can determine the best ways to combat it.
- 2. Set an example** by keeping your communications positive. Don’t give employees either a reason or an excuse to act negatively. Try countering negative statements by pointing out a positive. This may spur more positive thinking from others.
- 3. Expect positive action from employees.** Otherwise, they just might complete your self-fulfilling prophecy. So when employees start complaining, get them to take action instead by asking them what they’re going to do about it.
- 4. Give positive recognition often.** Feedback should not be mostly critical; accolades are equally important.
- 5. Watch out for negativity traps.** Beware of using labels. When conversation turns to complaints about policy, don’t join in. Try pointing out the positives, changing the subject, or turning it into a problem-solving discussion. Staying silent is not a good option — it may signify acceptance of a negative notion.
- 6. Get direct feedback** from employees on how to make the workplace more enjoyable, less tense, etc.
- 7. Give employees more decision-making power.** Employees’ negativity may stem from feeling like they have no control over their work or work lives.
- 8. Assess the situation thoroughly.** Challenge and check the “facts” of a negative situation.

TURNING NEGATIVE WORDS INTO POSITIVE ONES

Negative individuals who disrupt morale and cohesion can easily be identified by the choice of words they use. They tend to focus on the negatives or put things in a negative light. Your job: Listen for these positivity-killing words and phrases, and steer conversation back onto a more positive, or neutral, track. And make sure you're not falling into the same verbal traps!

Negative: "Never."

Positive: "Sometimes."

Negative: "Always."

Positive: "Sometimes."

Negative: "This is a problem."

Positive: "This is an opportunity."

Negative: "This won't work."

Positive: "Consider this potential flaw."

Negative: "It can't be done."

Positive: "It will require some hard work."

Negative: "You're wrong."

Positive: "Here are my thoughts."

Negative: "You must..."

Positive: "You could..."

Negative: "I hope it doesn't fail."

Positive: "I hope it does well."

Negative: "If only you had..."

Positive: "Next time..."

Negative: "This is what went wrong."

Positive: "This is what we learned."

Negative: "She doesn't understand..."

Positive: "Have I explained myself clearly?"

Negative: "I have to..."

Positive: "I'll be happy to..."

Negative: "He's not able..."

Positive: "He's better suited for..."

DRAW "POSITIVITY" INTO THE WORKPLACE

Just as negativity can be contagious, so can optimism. So instead of focusing on and talking in terms of "negatives," here are some pointers for firing up the optimism in employees. Keep a copy of this list on your desk, so you can be sure to remember to use one or more of these tactics on a daily basis.

- **Boost morale.** Sing employees' praises, reward a job well done, get down in the trenches and show employees that you're willing to roll up your sleeves.
- **Solicit feedback.** Always ask for employees' opinions before making

major decisions which will affect them. Even if you don't implement them, show your appreciation for any suggestions employees make.

- **Stimulate growth.** Lack of job advancement can drag employee morale down. However, encouraging employees to learn and get additional skills training can at least provide job growth. Challenge employees to do new, better things.

SOMETHING A LITTLE DIFFERENT

Think you've done all you can to dissipate the potential negativity hanging over your employees' heads? Well here's a strategy which is so subtle, it doesn't even require you to interact with your employees and try to change them.

It's a concept known as *feng shui*, which literally means "wind water" in Chinese. What it boils down to is how you set up and design your office supposedly can affect the flow of positive and negative energy into and out of the office.

It may sound a little far-fetched, but there are some practical aspects. For example, managers who position their desks in front of a wall and facing the door are supposed to feel powerful and protected.

If your office door is always open, and you come around from behind your desk to talk with employees, you emphasize a more open and positive atmosphere. Then there are the more esoteric parts of feng shui, like the belief that poorly placed exit signs may cause turnover.

The point is, the savvy manager will be open to listening to different and even off-beat options when it comes to negating negativity.

COMMON SCENARIOS

Now that you've begun stocking your arsenal with negativity busters, read these

management encounters with common negative personality types. Learn what the managers did right or wrong in dealing with these employees.

The Constant Critic

Employee: "It's never going to work."

Manager: "What do you mean 'never'? Care to clarify that?"

Employee: "It seems that it's been done before in different ways, and all of them have been unsuccessful."

Manager: "But as you can see, we're taking a brand new approach. Can you tell me what you see are the potential downfalls of this project?"

Employee: "The whole thing will be a bust by nature of the fact that factors which contributed to the downfall of the other attempts still exist in this new incarnation."

Manager: "So then what are some of the components we should concentrate on which will help this project succeed?"

Manager's Scorecard

- ◆ This manager immediately asked for clarification of the criticism. This serves two purposes: 1) If the criticism is unfounded, the manager prevents the employee from inflicting further "negativity" damage; and 2) if the criticism does have merit, the manager will be able to cull useful information for averting the forecasted failure.
- ◆ The manager took the right tack by getting the employee to focus on the positives. And by further soliciting input from the employee, the manager did not automatically dismiss what the employee had to say.

The Constant Complainer

Employee: “My desk is swamped! I’ve got so much to do this week. And being on the computer all day long puts a tremendous strain on my eyes.”

Manager: “It’s been a stressful week for all of us. Unfortunately, sometimes being swamped can’t be helped.”

Employee: “It would be better if we could spread this work out over a few weeks instead of letting it pile up. We should plan a little better in the future.”

Manager: “Some things are out of our control, especially where customer requests are concerned, so you just have to work through it. Is there anything that would help you to space out your work better?”

Employee: “I think the only thing that will help is if I come in a little earlier, stay a little later, and if necessary, take a shorter lunch.”

Manager: “I appreciate the effort. Once the crush is over, feel free to take a couple extra-long lunches. In the meantime, make sure you rest your eyes periodically.”

Manager’s Scorecard

- ◆ This manager knows that constant complainers thrive on sympathy and attention, so empathizing with the employee worked to acknowledge the complaints without reinforcing the negative behavior.
- ◆ The manager tried to take the focus off the problems and onto solutions by asking the employee to think beyond the complaint itself.
- ◆ The manager also played it smart by refusing to fall for the “martyr” act, feel

sorry for the employee, and allow him to duck some of his responsibilities. Instead, the manager showed appreciation, and then offered solutions to the employee’s complaints.

The Perfectionist

Employee: “They’re all amateurs. I feel like I’m banging my head against the wall trying to get them to do it right.”

Manager: “The results aren’t wrong though. I’m not sure I understand what the problem is.”

Employee: “The problem is, it took three days longer to complete than it should have, and they bungled some of the steps.”

Manager: “How do you propose we solve this problem?”

Employee: “There are a couple of employees who shouldn’t even be on the project, and someone else should be made the project leader.”

Manager: “That’s a little extreme. Since the results were correct, we’ll proceed with the project as planned. If you aren’t happy about it, come back to me in a couple of weeks.”

Manager’s Scorecard

- ◆ This manager started off well, by getting the employee to be specific in explaining the cause of her negativity.
- ◆ The manager also scored points by asking for the employee’s input on a solution.
- ◆ However, the manager fumbled at the end by immediately dismissing the employee’s complaint and solution. The

manager did not say or do anything to allay the employee's negativity.

The manager should have re-established the employees' goals and priorities, and continued a productive dialogue with the employee.

The Procrastinator

Manager: "Where are you in the research that's due to me tomorrow?"

Employee: "I've started it...don't worry, you'll have it on time."

Manager: "You know I'm relying on your information to complete my report — that's why I need it no later than tomorrow. And I don't want you to rush through it."

Employee: "I've got it all under control."

Manager: "I don't have any doubts about that. You've done good work in the past. But I know researching and verifying the information is extremely time-consuming."

Employee: "Why don't you give me the last two sections. I don't want any errors because you were under time pressure."

Manager's Scorecard

- ◆ This manager knows that procrastinators need help prioritizing, and smartly emphasized the importance of the task.
- ◆ The manager also did well to compliment the employee's previous performance and reinforce positive behavior, if the employee procrastinates because of a fear of failure.
- ◆ But the manager blew it by taking some of the employee's work away from him. This only serves to reinforce negative behavior by teaching the employee that procrastinating helps reduce his/her workload.

The manager should have had this dialogue earlier in the game, especially if procrastinating was a habit of this employee.

THE LEGAL ISSUES BEHIND NEGATIVE ATTITUDES

A negative attitude can become part and parcel of a negative employee performance appraisal. But if a manager has a hand in creating or encouraging the negativity, beware of legal fallout. The following cases demonstrate how mishandling a negative attitude can lead to myriad legal claims ... and how you can shelter yourself from the legal consequences.

Disability discrimination I: A year after an employee was hired, she was diagnosed with hypertension. The employee claimed that the stress was caused by short staffing in her department and preparations for the annual board meeting.

The employee requested “reasonable accommodations” that would reduce her stress, such as a job restructure, staff vacancies to be filled, or a transfer to a newly created position that was less demanding. All were denied. Instead the employee was asked to enter the company’s “career reappraisal” program. When she refused, based on confidentiality concerns, she was fired. Her manager noted that her negative attitude prevented the employee from effectively performing her job functions.

The employee didn’t buy it, and sued her former employer for disability discrimination. A jury awarded her \$525,047. The company failed to reasonably accommodate her disability because there was an open, less-demanding position which the employee was qualified for, but was not offered. (*Strass v. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.*)

Disability discrimination II: An employee suffering from insulin-dependent diabetes and muscular dystrophy was required to wear braces on both legs and walk with two canes. After being in his position for almost a year, he was demoted. Shortly after his

demotion, the company generated two letters criticizing the employee’s performance. One stated that the employee didn’t use proper procedure and that he had a negative attitude.

In his new position, the employee made several requests for accommodations, including a covered parking space during bad weather because it was difficult for him to maneuver when it was wet or slick. All his requests were denied. On top of the accommodation refusals, his supervisor also constantly criticized him by telling him he was useless and could not help customers fast enough. The employee couldn’t take the abuse and quit. He sued for constructive discharge based on disability discrimination.

A court of appeals sided with the employee, finding that the two letters were issued after his demotion and could have been created to fabricate a record of poor performance. Also, the company’s failure to accommodate the employee was evidence supporting the employee’s claim. (*Kells v. Sinclair Buick-GMC Truck, Inc.*)

Legal fallout: Don’t forget that the federal Americans with Disabilities Act (ADA) also protects employees with mental disabilities. Confusing a mental impairment with a bad attitude can cause employers to violate the ADA, if they refuse to accommodate, or decide to fire an employee based on a covered mental impairment which had been mistaken for a so-called bad attitude. Such mistakes may be common, especially when most companies do not have the medical resources handy to separate the wheat from the chaff when employees complain of being “stressed” or “depressed,” for example.

What to do: If an employee with a negative attitude claims a mental disability, employers have the right to ask for medical certification, or,

in some cases, a second opinion, to confirm the claim. However, credible testimony from a family member may also be enough, and asking for more may be an invasion of privacy.

Your second line of defense should be documented proof of the employee's essential job duties, and his/her failure to fulfill those requirements.

Finally, you may want to consider putting a policy in place explaining the types of behavior which are not acceptable in the workplace. All three of these can help support your employment decisions as being legitimate and based on the employee's performance, not his/her disability. You can find the guidelines at www.eeoc.gov/policy/docs/psych.html.

EEOC Guidelines on Accommodating Mental Disabilities

The Equal Employment Opportunity Commission has issued guidelines on dealing with mental disabilities, and several sections deal with negative aspects of employee activity. Here are some excerpts.

What major life activities are limited by mental impairments?

The major life activities limited by mental impairments differ from person to person. There is no exhaustive list of major life activities. For some people, mental impairments restrict major life activities such as learning, thinking, concentrating, interacting with others, caring for oneself, speaking, performing manual tasks, or working. Sleeping is also a major life activity that may be limited by mental impairments.

Interacting with others, as a major life activity, is not substantially limited just because an individual is irritable or has some trouble getting along with a supervisor or co-worker.

When does an impairment substantially limit an individual's ability to interact with others?

An impairment substantially limits an individual's ability to interact with others if, due to the impairment, he/she is significantly restricted as compared to the average person in the general population. Some unfriendliness with co-workers or a supervisor would not, standing alone, be sufficient to establish a substantial limitation in interacting with others. An individual would be substantially limited, however, if his/her relations with others were characterized on a regular basis by severe problems, for example, consistently high levels of hostility, social withdrawal, or failure to communicate when necessary.

Example: A reference librarian frequently loses her temper at work, disrupting the library atmosphere by shouting at patrons and co-workers. After receiving a suspension as the second step in uniform, progressive discipline, she discloses her disability, states that it causes her behavior, and requests a leave of absence for treatment. The employer may discipline her because she violated a conduct standard — a rule prohibiting disruptive behavior toward patrons and co-workers — that is job-related for the position in question and consistent with business necessity. The employer, however, must grant her request for a leave of absence as a reasonable accommodation, barring undue hardship, to enable her to meet this conduct standard in the future.

Are traits or behaviors in themselves mental impairments?

Traits or behaviors are not, in themselves, mental impairments. For example, stress, in itself, is not automatically a mental impairment. Stress, however, may be shown to be related to a mental or physical impairment. Similarly, traits like irritability, chronic lateness, and poor judgment are not, in themselves, mental impairments, although they may be linked to mental impairments.

Age discrimination: Upon returning from vacation, an employee was fired for allegedly having a bad attitude. The 62-year-old employee, however, pointed to the fact that during his first few months of employment, he

received an excellent performance review and a pay increase. He also noted that his employment file failed to contain a single complaint about his negative behavior.

His employer conceded that his performance was excellent 10 months ago when the review was given, but had steadily declined. The company cited instances where the employee bad-mouthed both co-workers and managers and was so careless that he ruined several pieces of equipment.

In light of this evidence, an appeals court ruled that the employee failed to prove that his termination was motivated by age discrimination. The court went on to say it found it unlikely that the company would hire a 61-year-old employee only to turn around and fire him a year later because of his age. (*Roberts v. Separators Inc.*)

Legal fallout: The mere fact that an over-40 employee was fired helps establish a *prima facie* case of discrimination. However, determining whether the claim is legitimate requires looking beyond the face value of the charges. Courts will thoroughly assess the employer's "attitude" as a reason for the termination in order to determine whether bias exists or not.

What to do: Employees with negative attitudes should be handled in the same way as any other problem employee. This includes:

- Documenting all incidents of where an employee's attitude negatively affected the company and any warnings or disciplinary measures doled out;
- Following the company's progressive discipline policy immediately, instead of letting the employee "slide" the first few times or for the first few years;
- Letting employees know that attitude counts — either for or against them — in the company handbook, during employee orientation, etc.; and
- Warning employees of the potential consequences of inappropriate behavior.

Sexual harassment I: A female employee complained of sexual harassment, and was later fired for insubordination for walking off the job. She returned to work after the charges were settled, only to discover that the company advised employees to not sexually harass or socialize with her, and to report her activities to management. The employee eventually resigned, and sued the company for sexual harassment and retaliation.

A court ruled that the negative behavior exhibited by the co-workers did not amount to retaliation under Title VII, since there was no evidence that the terms, conditions, or benefits of the employee's employment were adversely affected. (*Munday v. Waste Management Maryland*)

Sexual harassment II: After working her way up the ranks, a female employee was given the opportunity to head up a new program, which failed to take off as expected. Shortly after, her male supervisors, who had previously given her excellent reviews, began noting that she was a poor listener, intolerant, insensitive, and a poor communicator. Two male co-workers echoed these complaints as well.

When the employee was let go in what she was told was a reduction-in-force, she sued her employer for sex discrimination.

Let the case proceed under Title VII, said an appeals court, which reasoned that the employee's performance reviews were excellent except for the repeated references to her aggressive interpersonal skills — skills which were often encouraged in male co-workers. (*Bellaver v. Quanex Corp.*)

Legal fallout: When it comes to what is and isn't protected under Title VII, it's easy to become confused. The fact that the employer in the first case was not found liable for employees' negative treatment of a co-worker further supports the fact that companies cannot be expected to shield their employees from all things unpleasant in the workplace. However, as the second case proves, this doesn't give managers *carte blanche* to treat employees

according to impermissible stereotypes. Therefore, you should pay special attention to smoothing over *any* interpersonal imbroglios.

Race discrimination: A terminated employee claimed that his superiors wanted to get rid of him, so they arranged for him to be seduced and consequently fired. In court, he also alleged that as an African-American, he was compensated at a lower wage and offered a smaller severance package than other non-black employees.

His immediate supervisor, however, believed that the affair showed poor judgment — just the latest example of the employee’s negative attitude, which was most evident in his inability to work as part of a team. The company also pointed to the fact that the only person who was paid a higher salary than the employee was his immediate supervisor, and that his severance package was based on previous packages.

Due to these non-discriminatory reasons, the case was dismissed by a trial court. (*Triplett v. Belle of Orleans L.L.C.*)

Legal fallout: Personality conflicts are often at the heart of negative attitudes. And even though courts have ruled time and time again that managers cannot be expected to prevent all incidents of animosity between management and employees, managers don’t have the go-ahead to brush aside interpersonal conflicts.

What to do: Keep an eye out for hostility or negativity toward any one employee or particular group of employees. If you yourself are having problems with an employee, do your best to ease the tension. And remember, it is absolutely imperative that you halt negative sentiments — by management and workers alike — regarding a protected characteristic, which, on top of age, race, sex, etc., can include participation in a protected activity, such as filing a grievance.

National origin discrimination: A company fired a saleswoman because she was not “customer friendly” and “could not be trained to purvey the type of positive, friendly,

and enthusiastic image” required of its sales staff.

The saleswoman, who was Puerto Rican, alleged that the company discriminated against her based on her national origin. She claimed that her manager warned other employees to watch her “hot Latin temper,” made fun of her accent, required her to speak only English on the job, and made disparaging remarks about Hispanic customers.

The court sided with the saleswoman, finding that she had sufficient evidence of discriminatory motive, and awarded her \$50,000 in damages. (*Rivera v. Baccarat, Inc.*)

Legal fallout: The threat of a discrimination claim may discourage some managers from disciplining employees with a negative attitude if they belong to a protected class. But it’s a must, if the employee is not doing his/her job or is disrupting others from doing their jobs. Not only that, but ignoring the attitude of certain employees may lead to a pattern of ignoring attitude problems with all employees, which can certainly hurt a department and company. On the other hand, letting some attitude problems off easy, and coming down harder on others may lead to charges of reverse discrimination.

What to do: By all means, document the negative work-related effects of an employee’s poor attitude, regardless of who the employee is. The operative phrase here is “work-related,” i.e., document only the facts of the employees’ actions and resulting consequences on his/her performance. Never, ever include personal opinions on an employee’s race, age, etc., or try to find a causal connection between the employee’s attitude and such unrelated traits.

Military status discrimination: When an employee enlisted in the U.S. Army, he wrote a resignation letter to his Japanese-owned company. In it, he referred to the company as “Japan, Inc.”; compared Japanese society to Nazi Germany and Communist-era Romania; and criticized different aspects of Japanese culture.

Upon being honorably discharged from the Army two years later, the employee asked the company to reinstate him. When it refused, he charged the company with violating the Veterans' Reemployment Rights Act (VRRRA).

The company argued that the employee's resignation letter gave it cause for termination, so he was not entitled to reinstatement. An appeals court agreed that the negative letter evidenced a lack of loyalty to the company and gave it a basis for ending the employment relationship without violating the VRRRA. (*Preeda v. Nissho Iwai American Corp.*)

Legal fallout: Know that the VRRRA entitles employees to reinstatement if: 1) they left their jobs to perform active duty in the armed forces; 2) they were honorably discharged; and 3) they are still qualified to perform the duties of the job. And that this right is not absolutely guaranteed.

But with the employee disagreeing that his negative attitude precluded his reinstatement rights, the company found itself with a real legal battle on its hands. The company's saving grace: Proving that the attitude was severe enough to warrant keeping the employee off its payroll regardless of his military status.

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