



Problem People: What U.S. Employers Should Know About Employee Discipline

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Nobody enjoys dealing with problem people on the job. They create drama. They're never happy. It's all about them. And if they spent half the time they dedicate to complaining and coming up with reasons why they can't do the work, there wouldn't be a problem.

Problem people are exhausting.

We're not talking about the people who show up to work wasted or who don't understand that discrimination and harassment laws really do apply to them. Those people you terminate as quickly as possible.

Problem people repeatedly mess things up and tell you in excruciating detail why it's not their fault. Then no one gets anything done for three days while they discuss the issue with everyone they encounter.

This means trying to discipline problem people is a real challenge. If you do, it just creates more drama. If you don't, it just creates more problems.

Here are some strategies for managing problem people. But first, a quick discussion of the rules for discipline and termination in the U.S.

What Law Applies

The first thing to know is that both federal and state employment laws apply to your employees. Federal law applies to anyone working in the United States. The state law that applies depends on where your employee sits.

If your organization has multiple locations in different states, remember to apply the law where the employee is rather than where the organization has its headquarters.

For example, if you require employees to sign noncompete agreements, and you have hundreds of people in California, those agreements are void and unenforceable under California law.

If you have minimum wage employees, you have to pay the minimum wage for where the employee works, which may also involve local wage laws and requirements.

If your employees have become nomadic during the pandemic, you may need some legal help to determine what laws apply.

What At-Will Employment Really Means

In the United States, employment is generally “at-will” unless employees are protected by a collective bargaining unit or a written employment contract for a specific term or if they work in a state that requires “good cause” for termination, such as Montana.

At-will employment means the employer can terminate an employee at any time, for any reason except those that are made specifically illegal, such as retaliation or discrimination based on a protected class. If you don’t like their socks — legal. If you don’t like their braids or twists — illegal.

Under at-will employment, an employee has the right to quit at any time for any reason or no reason at all.

In other places, such as [Canada](#) and the EU, employees can only be fired for “just cause” or “good cause.” Good cause means a reason related to the employee’s performance or conduct that is significant enough to justify ending the employment relationship.

In the U.S., employers usually don’t need a good reason to terminate someone’s employment. This seems harsh, especially because employers have far more power in the relationship.

But the reality is that most employers don’t like terminations. The process is fraught and emotionally difficult for everyone. Then, replacing employees is time-consuming and expensive. So, even though employers can fire anybody anytime for no reason, most don’t.

When you have problem employees, something needs to change. It’s not working the way things are going, and it’s a pain in the neck to fire them. So where’s the middle ground?

This is where the concept of employee discipline comes in. Of course, we don’t call it “discipline” these days. Getting in trouble is bad for employee engagement. It’s also very patronizing. Employees are intelligent, capable humans we chose and invited to come work with us. We don’t “discipline” people we need and who want to help us.

Instead, we coach, define the new conduct we want to see, and create accountability. We call our friendly employment lawyers and start keeping notes on every interaction with the employee. Sometimes it works. Most times, it doesn’t.

Somewhere along the way, humans decided that if we just add enough process and procedure to any problem, we’ll figure it out and things will be great. The right policies will be able to guide the situation, and if we just follow the process, we’ll be safe.

What usually happens is that the plan completely defeats the purpose. We get worried about compliance and risk. We pore over the employee handbook to make sure we’re doing it right. We call meetings. But the minute the situation goes into the process, everyone knows something is up. The employee gets defensive. The employer gets focused on protecting itself.

At that point, the relationship is pretty much doomed. Once the situation becomes adversarial, it becomes impossible to solve the real issue, which is getting a problem employee to change.

Discipline Strategies: Flexibility Matters

How we deal with problem people partly depends on how we view second chances. Some organizations are willing to spend the time and effort to help employees turn themselves around; others aren't. It depends on the size, resources, and work of the organization. It also depends on what's going on.

There are usually a couple of unwritten and unspoken approaches to problem employees — either we work to help people grow and improve or we bring in people who can do it the way we want it. Both approaches can be perfectly reasonable depending on the circumstances.

Either way, it's essential when going into the situation to know what outcome you are headed toward. It makes every decision clearer and opens options you might otherwise miss.

Before you do anything, ask, “Do we know what's going on with the employee?”

If you don't, stop and find out.

If you do know what's going on (things are difficult at home, medical issue, problem with their manager, hates their coworker), ask these questions:

- What does the employee want?
- Has the employee asked for help?
- Do they know what help is already available?
- Is the problem long-term or temporary?
- Is the problem something we can control or influence?
- What else could help?
- What are the options we can provide?
- What is the likelihood each option would work?
- What are the time and resources involved?
- What does the employee want?

Yep. What the employee wants is in there twice. That's because if the person wants to leave, then help them. Offer time and assistance to find the next thing. There are lots of options that are easy, less expensive (really), and much less risky in the long run. We talk about a bunch of them below.

Sometimes employees say they want to stay, but secretly, they really want to leave. They're scared of being unemployed and don't know what they want to try next. They're buying time to find the next role. When you realize that leaving is the best thing for everyone, find ways to do it with kindness and compassion.

If the employee doesn't want to leave, then it's time to figure out what's best for the organization and the employee as well as how to get there.



Are you seeing the problem or symptoms?

The real problem is often hidden, and the employee's behavior may be a symptom rather than a cause. If an employee procrastinates, is disorganized, and seems scattered, but their work is great, there are lots of potential explanations. They could have ADHD, be depressed, be dealing with long COVID, be going through a breakup, or all of the above. Maybe it's none of the above.

Don't make assumptions. Don't diagnose people. Don't make decisions before you understand whether you're seeing the problem itself or symptoms of something else.

Do talk to the employee. Do ask what would help. Do take their complaints seriously, especially if they're dealing with harassment or discrimination at work.

To get to the truth, employees need to feel safe enough to tell it. You can't make any promises of safety until you understand what's really going on. You can assure people you care, you'll listen, you'll take what they tell you seriously, and you'll do what you can to help them through whatever it is.

If the employee's story raises as many questions as it answers, it's worth looking at your people analytics and other data too.

- 🔍 Are there things that have changed in the employee's department or location?
- 🔍 Are there things that should have changed but haven't?
- 🔍 Look at voluntary turnover, absences, performance, engagement, pay equity, diversity, and flight risk. Is there anything that looks off? If so, look into it.
- 🔍 Do a quick survey. Ask an open-ended question that lets people tell you what they want to say instead of what you want to hear. It can be as simple as, "Is there anything else you want us to know or understand?"
- 🔍 Look at your survey response rate. If it's low, there might be a lot of things people don't want to say. Stop nagging people to answer surveys. The response rate usually tells you more even though you may not want to hear it.
- 🔍 Look at complaints from the past two years for the employee's department and location. You may discover clues, especially if you're sensing trouble in your other data and information.

Sometimes, it's very straightforward. Their dad died. They're having a rough pregnancy. They're dealing with a medical issue. They're distraught and distracted right now and need a break.

In those cases, respect the employee's privacy and don't push for details. Remember that having an emotional breakdown in front of HR or their manager will definitely *not* help them feel better. Understand they are having a normal response to an abnormal situation.

Go straight to what they need from you and point them to options, such as the Family and Medical Leave Act, paid time off (PTO), relevant benefits, and resources. Give people time to consider the options and ask what they would like. Then do your best to help them navigate the process.

Carrots or sticks?

If the problem is something involving work and the employee needs to address behavior or performance issues, then you have to decide whether to try carrots or sticks.

Sticks rarely work. Scaring someone into doing anything doesn't build trust or skills or change behavior. Everything gets worse or simply goes under the radar.

Carrots are also difficult to get right. **Positive incentives generally work better than negative consequences to inspire people to do something differently. But you also don't want to create rewards for conduct you don't want.** When you give people special treatment for behaving badly, it just inspires more bad behavior.

Instead, focus on the problem, its causes, and what you can realistically do about it. Put everyone on one side — the side that wants to solve the problem.

This is at-will employment. Anything is possible. Get creative and find an approach that will actually work.

Why compassion is the most important thing

Employment is a human relationship. People identify with their jobs. In the U.S., work is a cultural necessity bordering on an addiction. If we're busy, then we're worthy and important. We want to make money to pay our bills, support our families, and have tangible proof of our value in the world. We even call it "net worth."

Any time we change our employment relationship, all of this cultural and emotional baggage comes along for the trip. Taking a new job or leaving one, voluntarily or involuntarily, is a huge deal on many levels.

Human beings going through big, emotional, and challenging things deserve compassion. Compassion means care and understanding. It doesn't mean giving up, giving in, placating, or being nice to avoid upsetting someone. It means seeing yourself and the other person as fully human, imperfect, and worthy of kindness.

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Compassion is not a relationship between the healer and the wounded. It's a relationship between equals. Only when we know our own darkness well can we be present with the darkness of others. Compassion becomes real when we recognize our shared humanity.

Pema Chödrön
Buddhist teacher, author, and nun

Compassion is an essential part of seeing things clearly. It's about acceptance and starting exactly where we are to find the path that's best for everyone, even if it's not exactly what we hoped for or wanted.

When we're making big changes in our own work lives or someone else's, it's essential to see past our pain and emotional discomfort so we can do the right thing. Compassion for ourselves, the other person, and the situation is the best way to get there.

The Setup and Other Bad Ideas

What often happens with problem people is they're asked to change and expected to change. But they aren't sure how to change or don't want to change. They can't understand why they're being blamed for something that's clearly not their lane, problem, or fault. So, the file gets documented, the process proceeds, and ultimately, the employee gets fired.

This is the setup. Once it starts, it only ends one way.

Why you shouldn't set up employees to be fired

The setup doesn't serve anyone. Instead, it makes everyone crazy, escalates whatever was going on before, drags things out, and does absolutely nothing to address the real issue. It's process for the sake of process with documentation of the process to prove the process. The employer is busy managing risk. The employee feels rejected and like the employer is out to get them. And nobody's wrong.

Instead of dealing with the real problem, or even deciding a mutually beneficial outcome, everything gets worse until it's bad enough to justify termination. The employer talks about improvement as if it would make a difference, but their actions are all about setting up the employee to fail.

Failure becomes the goal because termination will resolve the situation.

Warnings and progressive discipline are just a formal kind of setup where there's even more process and opportunity for people to feel awful. Progressive discipline is the belt and suspenders of failure.

When you set up people to fail, you end up with disgruntlement and drama. The employee tries to work while freaking out about what might happen. They talk to their colleagues, looking for validation and sympathy. People start taking sides. There's more drama. The work doesn't get done.

But hey, there's finally a reason to fire the person.

Don't do this. It undermines productivity, creates misunderstandings and mistrust, and increases the risk that someone will make a claim the employer has to investigate, defend, or both.

In short, dragging things out so you can document bad behavior and cause failure makes everything worse.

Creative Alternatives to Discipline

Now that we've told you that discipline, the setup, and pretty much every form of cajoling, doing nothing, and termination don't work, you're probably wondering what does.

Before you try termination, explore some other tactics that begin with T.



Time off

Sometimes what people need is to deal with one thing at a time. Time off can make a huge difference for someone dealing with medical, emotional, or other kinds of stressful situations. Understand what PTO is available and which benefits may apply. Then work with the employee to find an approach that works for everyone.



Treatment

If the person needs to see doctors or therapists, or get help for addiction or abuse, facilitate their healing. You'll keep a valuable employee, and they'll remember you helped them when they needed it.



Training

When your problem person is new to the organization, or even new to their role, the trouble may be that they need to take a class, brush up on some skills, or learn to use some tool or technology. Before you decide it's not going to work out, help them get what they need to succeed.



Transfer

It's amazing what a difference a different role, location, or manager can make. If any of these factors are part of the problem, consider changing them.



Trust

Employees need some control over their day and work. They need agency, autonomy, and the time and trust to get work done. If people are burnt out because they're in meetings all day and trying to get other work done in the cracks, there are probably several things that need to change on the organization's side. Talk to people and find out what's in their way. Then try things to see what works. And yes, most meetings can be emails.

You can even try ideas that don't begin with T. The point is that everyone goes through difficult times and sometimes work is not their first priority. There are often solutions that can work for everyone if you focus on the issue and are open-minded about potential solutions.

When Termination Is the Answer

There are times when termination is the right thing to do, such as when:

- The employee has been violent toward others or threatened violence
- You've investigated the problem, and the employee is harassing or being abusive to another employee
- The employee cannot or will not do the work
- The employee can't seem to show up and isn't willing to address the problem
- You've tried some of the ideas above and they're just not working

Once you realize you're dealing with one of these situations, the worst thing you can do is wait and drag things out. Get legal involved to make sure you're handling the termination legally. Then set everyone free.

Assess whether someone is likely to take things they shouldn't, harm people, or anything else, and manage for that.

If it's a mutually agreeable termination, consider relieving the person of duties but keeping them employed with their work email and phone while they find the next job. Offer a set time limit. Even though the organization is paying their salary and benefits, it makes a huge difference and allows everyone to save face and walk away friends — okay, at least not enemies.

The joys of severance and release

One of the most effective approaches to termination is to offer severance in exchange for a release of claims. Sometimes the severance includes reimbursement of Consolidated Omnibus Budget Reconciliation Act (COBRA) premiums for a while. This gives the employee certainty and a cushion while they decide what's next.

The employer gets final resolution and doesn't have to worry about getting a claim or lawsuit down the line.

Severance is always less expensive than lawsuits. You can pay a lot of people severance before you spend what it costs to defend even one lawsuit — many more if you lose. And that's before you account for the disruption, drama, and depositions.

Last, consider whether it makes business sense to challenge someone's unemployment claims. Often, it's not worth it, even when the employee was awful to deal with.

Problems Are Opportunities

Life is messy. People are messy. Just because you're dealing with problem people at work, it doesn't mean that either discipline or termination is the answer.

Find out what's going on and try to solve for the causes rather than the symptoms or just because there's a problem.

Avoid solutions that create adversarial situations. Instead, try to work with the employee to resolve the situation in a way that helps everyone, even if it means the employee leaves.

Consider what would be best for the employee, the job, and the organization. When they don't align and termination is the best option, treat the employee with dignity and compassion to make that decision work for everyone.

We don't need to make things worse.

Focus on solutions to problem behavior rather than the fact that there's a problem.

The thing about problem people is that they have problems. Sometimes it affects their work. But no human is a problem.

Problems are opportunities for change. It's a chance to get things right.



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