

Employer's Short List of New Year's Resolutions for 2015

Everyone who supervises employees ends up dealing with difficult employees – poor performers, bad attitudes, and so on. Here are five simple New Year's resolutions for those situations, drawn from advising employers for 35 years about every imaginable employment problem, and litigating the disasters that sometimes result.

Stick to these simple resolutions and you won't be sorry. They will make you a better manager, and they might just provide you with the best defense for an employee lawsuit. So, for 2015, resolve the following for dealing with difficult employees:

Resolution No. 1: I will tell them the truth.

Do not invent softer reasons for difficult bad news. Every employment-related lawsuit requires the *employee* to prove that legitimate reasons for a tough decision were not true, and that a prohibited motive was the real reason. Don't *give* the employee ammunition with a false, sugar-coated explanation that avoids the harder truth. Think about trying to explain: "well, I *did* lie about the reason, but there *really* was another *good* reason and now I am telling the truth about that reason...."

Resolution No. 2: I will be decisive and not dither around.

This is a close cousin of Resolution No. 1. Letting someone off the hook too many times is a frequent source of trouble for employers when a lawsuit erupts. One way for an employee to undercut the legitimate reasons for a decision is to show that the employer repeatedly condoned the misbehavior, and then only cracked down when (for example) the employee hit a certain age, or the employee became pregnant, or the employee was injured, or similar types of circumstances.

Resolution No. 3: I will always try to be fair and even-handed, including times when I do treat employees differently.

Playing favorites for personal reasons is another easy way to provide the very ammunition needed for a lawsuit. The law of the workplace favors fairness; demonstrating that a decision was fundamentally fair under all the circumstances will often provide a solid defense. Similarly situated people should be treated similarly; it's only fair. On the other hand, fairness includes the idea that differently situated people can be treated differently. It's OK to cut more slack for a 25-year employee than a new employee, because the long-service employee has "job equity."

Resolution No. 4: I will take the time to document my interactions.

Jot down notes about interactions with employees. Contemporaneous notes about performance discussions – even simple jottings in a calendar — make very impressive exhibits. Keeping track of things also helps you make better decisions – such as not tolerating something anymore and being decisive (see Resolution No. 2).

Resolution No. 5: I will never deliver bad news in anger.

I cannot prove this with statistics, but experience teaches that a supervisor's tone when delivering bad news may be the single most important factor in whether that employee walks away and looks for a lawyer. Bad news can be delivered with empathy or at least civility. Lose your temper at your own risk, even when you are totally in the right.

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