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Small Business Report: *Personnel Issues*

Handling problem employees requires communication, documentation

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Problem employees — they may not start out that way, but whether it's a person who is lazy, one who has a bad attitude or a person who just isn't cut out for the job, the impact can be far-reaching and must be addressed swiftly and directly.

Problem employees are a hindrance for nearly every company, no matter what the company's size, but the solutions apply across the board.

"I think the first thing that companies need to do is make sure that they have the individual in the right position," said Kim Kocher, vice president of communications at the Human Resources Association of Central Ohio. "You're not going to take a power forward and make him the dribbling guard. You're not going to make a quarterback a left tackle."

Sometimes the job a person applies for isn't what he really wants to be doing whether he has the ability or not. On the flip side, if an employee loves what she's doing but doesn't have the proper skills to do it, no amount of passion can make up for that absence of ability.

If the job and the worker aren't a fit, the employee or the employer probably will be forced to decide whether it's time to change the situation, whether it be a mutual agreement or a mandated termination.

Job fits aside, some people just become problem employees (and neither they nor the employer may recognize what spurred the problem), but they can wreak havoc in the business place within a very short time.

"That bad apple will spread from itself," he said. "I've been in full time employment for 36 years and I've never

seen an exception. When a company sees a problem and tries to isolate it and move on, it always gets worse."

The first step is a verbal reprimand. The employer must sit down with the employee and a "witness," be it a supervisor or an HR representative or both and address all the concerns plus explain what type of changes are expected. Kocher suggested a reasonable time frame to expect improvement is 30 to 45 days.

If possible, she said, try to provide some positive reinforcement along with the negatives being addressed. It's human nature to respond to positive feedback, so talk about what the employee does well and tell him how it benefits the company. Explain that the company wouldn't be taking the time to address the issue if the employee didn't have value.

"You close by saying, 'We still feel you can fit into this team. If we didn't, we wouldn't be investing the time to lay out this action,'" said Kocher.

If the problem persists, a written reprimand is in order. It's important to make sure that the employee and the witness both sign the write-up to provide legal documentation. Kocher says the employer should make it clear to the employee that this written warning is serious and if improvement doesn't appear within two or three weeks, the situation will be taken to the "next level."

"You need to lay out what that next level is," said Kocher. "It could be a week without pay up to and including termination."

If termination is the solution, the employer needs to make sure he has all his bases covered. Even though Ohio is an at-will state, meaning any employee can be fired at any time for any reason not protected by law, that doesn't mean

an employee won't file a lawsuit saying he was discharged without cause or treated unfairly.

"Really in today's world, almost everybody can fall into a protected category," said Andrew C. Smith, chair of the labor and employment law group at Vorys, Sater, Seymour and Pease. "It's very important to make sure that the reasons for the termination are valid reasons."

That's where the difference between objective and subjective motives become important, he said. If an employee isn't meeting a reasonable quota, it's not something that can be debated. If that worker just doesn't work well with others, it's not as easy to prove.

"The difficulty frankly can be sometimes that a personality termination can mask a motivation that's protected," said Smith. "If I don't like someone because I'm a boss and I'm 30 and they're 50 and I'm having a tough time working with them because of that, I have to make sure my reasons aren't age and are based on productivity."

Smith added that documentation is the most important detail in protecting a company from a wrongful termination lawsuit. Write down all of the instances when the employee didn't perform to expectations, document the result of verbal and written warnings, and keep track of complaints from other workers. A large paper trail will start to look like a life raft when litigation comes down the river.

"You need to make sure that the reasons are valid and are reasonably related to business," said Smith. "It's maybe an oversimplification, but if you follow that simple conscript, you should be OK."