

# Workplace Law Bulletin

AIRD & BERLIS LLP  
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## Dealing with the Difficult Employee

By **Lorenzo Lisi**

All organizations have to deal with the “difficult” employee. With enough knowledge of the law to be dangerous, this employee seems to know all the right buttons to push and takes up a considerable amount of time and resources to manage.

Employers, however, are not powerless to address the conduct and performance of a difficult employee. The consistent use of a performance management system allows an employer to chart performance issues objectively for use in the event that the employee alleges that he/she has been improperly treated in the future. The performance management should be objective and consistently applied to all employees. It should establish and maintain reasonable productivity and efficiency standards and set out clearly the expectation that employees will perform their assigned duties in an appropriate and careful manner and also, that employees will generally exhibit a positive attitude and consistent work habits. And finally, it should be specific that discipline may be imposed when employees fail to meet these standards of performance due to their conduct and performance.

The key is to be reasonable, objective and treat all employees the same. Employers cannot insist on perfection in every respect of all work duties assigned to an employee. Mistakes will be made from time-to-time! However, the test for assessing an employee’s qualifications and capabilities to perform a particular job is “reasonable ability,” which is the ability of a reasonably able, skillful, trained and efficient worker doing similar work.

The concern when it comes to managing difficult employees is that they take so much time and effort that constantly keeping up with their demands is often a job unto itself. This is the hallmark of the difficult employee. It often leads to conduct or performance issues not being addressed, as well as possible liability down the line when the conduct leads to discipline or termination. We feel your pain, but this just heightens the need to address issues as they occur and document everything (even if it’s just a note of a conversation with the employee). When all is said and done, you’ll need all the information on file to manage, correct and possibly discipline the employee.

Here are some important tips to remember on how to deal with the difficult employee:

- Ensure performance objectives are clearly communicated to employees, consistently enforced and address failure to meet reasonable standards;
- Don’t delay in conducting performance reviews. Get them done quickly and set a plan for follow up, including any performance improvement plan which may be necessary;
- As difficult as it may seem, address all complaints/issues/performance problems with the employee. Document every communication, in writing if possible. Create a chronology with a timeline for use by a human resource professional and/or lawyer to review and address next steps;

- Think strategically. In the absence of any human rights issues, consider whether a severance on a without cause basis (with or without working notice) might be a better business option than ongoing human resource management; and
- Don't panic! Stay calm. The difficult employee expects the employer to react negatively. Treat their issues objectively and dispassionately. It will be a huge advantage in the long run.

For more tips on how to deal with the difficult employee, including those who suffer from a mental illness or who have absenteeism or attendance issues, please view our archived webinar by clicking [here](#) or click [here](#) to obtain the corresponding PDF presentation.

If you have questions regarding any aspect of workplace law, please contact any member of the Aird & Berlis LLP Workplace Law Group:

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