

If you don't use self-appraisals, you can incorporate a similar structure into the traditional appraisal process with a couple of yes/no questions:

1. Did you review the employee's current job description with him?
2. Does the employee feel it fairly accurately reflects his or her current job duties? For this question, be sure to define "fairly accurately" such as, "at least 80 percent of current, primary duties and responsibilities are listed."

Coaching, Counseling, and Correcting

Writer and psychiatrist Theodore Rubin said, “The problem is not that there are problems. The problem is expecting otherwise and thinking that having problems is a problem.”¹

Whether your role is as an HR administrator, business owner, manager, or supervisor, you are also the complaint department. Your job is to take employees’ complaints. And you know what? You should be thankful for nearly every complaint you receive. Why? It takes trust. Employees generally will not complain to someone they do not trust. So the next time an employee comes to you with a complaint, smile. Be thankful that they are complaining to you and not an external agency or opposing legal counsel. Take it as a compliment; you are trusted.

In Chapter 1 we have already mentioned employment at-will and its exceptions and we will touch on it again in Chapter 6. So here, let’s just ask, “If employment is at-will, why bother with coaching, counseling, and/or correcting? Why can’t I just let an employee go?” Well, generally you can), assuming your reason for terminating the employee does not establish some form of unlawful discrimination or retaliation, or have some other unlawful basis. So if it’s not unlawful why *should* you coach, counsel, or correct prior to termination? That takes a lot of time and energy. But consider this. How much time, money, and energy have you already spent just bringing this person on board? Add up your advertising dollars, lower productivity during the learning curve, plus your time in recruiting, interviewing, selecting, and hiring — you have made a substantial investment in this individual. Do you

really want to toss that aside and start all over again? See again some of the HR metrics mentioned in Chapter 1.

So, if we agree that there is a valid return on investment (ROI) in coaching, counseling, and correcting, then let's begin.

Coaching

What nouns and adjectives come to mind when you think of a coach? Trainer, teacher, instructor, mentor, and more? At what point do you begin setting expectations for your new employees? The first day of employment? During new employee orientation? How about during the employment interview? What better time to let a prospective employee know what you expect in your department, not to mention the organization as a whole? What is your expectation with regard to professional attire? Attendance and punctuality? Customer service?

And once the employee is on-board (see Chapter 8), how do you practically set expectations? Be specific: "I expect employees in my department to be punctual, and we do not tolerate excessive absenteeism." Does the employee know what you really expect? How is punctuality defined? Some people would say one minute late is late. On the other end of the spectrum some employers address performance without regard to *when* the work is done, offering unlimited leave and no defined work hours. The question is how do *you* define excessive absenteeism for your employees in your department? Does the reason for the absence make a difference? What if it was scheduled in advance, would that count in your definition of excessive? And how and when do you effectively communicate those expectations to your employees? Don't assume. While you know what you expect and mean, you cannot assume that the employee does. Be clear and specific: "I expect employees in my department to have no more than one unscheduled lateness and no more than one unscheduled absence each month."

Many times employees become frustrated because they thought they followed a supervisor's instruction only to learn that they had not. Clear communication of expectations is a shared responsibility. You cannot assume an employee knows what you mean when you use certain action verbs like increase, decrease, improve. Quantify, quantify, quantify. And use time

tables to set your expectations. I suspect most every person reading this book has heard the acronym for giving “SMART” instructions or directions. You may have heard it before but I believe it is worth repeating and giving due consideration with practical examples. I must say before proceeding, I have found no less than eight variations of the acronym² and I suspect there are more. Most variations, however, focus on similar principles.

Specific

When you give an employee an instruction, be sure it is specific, such as including behavioral examples. Rather than telling an employee, “You are expected to always provide quality customer service” you might say, “You are expected to greet every customer with ‘Good morning’ or ‘Good afternoon’ and ask, ‘How may I help you?’ ”

Measurable

Where possible, use behavioral objectives that can be measured. Rather than telling an employee, “You are expected to maintain consistently high quality with a low error rate,” you might say, “You are expected to maintain consistently high quality by producing an average error rate of no more than 2 percent.” As mentioned in the previous chapter, I find one of the most challenging aspects of this element arises when dealing with soft skills, such as described above; how do you measure quality customer service? Even that can be quantified by telling an employee, “We expect no customer service representative to receive more than one customer complaint per quarter.”

Attainable or Achievable

An employee cannot succeed in performing your assigned task if he does not have the requisite knowledge, skills, and abilities (KSAs) to accomplish the task. Be sure your employee has been trained in how to do a task before expecting him to perform it. I remember a time when I was in human resources in a hospital and an employee who worked in the operating room was written up for violating the department’s sterile protocol. Without going into all the detail, in short, he had not laid out the instruments the way the surgeon and department expected and had inadvertently contaminated the

sterile field. His explanation was that he laid out the instruments as he was taught in medical school. Further research revealed that there were, in fact, different approaches as to how a sterile field could be established. What a teachable moment. The department needed to ensure they taught employees as to the protocol they wanted employees to follow rather than assuming that everyone followed the same protocol.

Realistic, Results-Oriented or Relevant

I distinguish this factor from the one above as extrinsic versus intrinsic. An employee may have the intrinsic or internal KSAs to get the job done but may be constrained by extrinsic factors such as not having the authority to get the job done; thus it is not realistic for the employee to be able to accomplish what you ask. Take the example of an inventory supply clerk who lets inventory levels fall below par. The employee's explanation is that he did know how, when, and from whom to order the supplies. He could not do so, however, because he was authorized to order only up to \$200 of inventory. The needed supplies cost \$500, and the purchasing agent who could authorize this order was on vacation. This employee was not given the resource, nor was he empowered with the authority he needed to get the job done. Yes, there is still accountability on the employee's part for not taking this a step further and asking his supervisor for assistance, but this problem was created as a result of a shared responsibility on the employer's part as well.

The task must be results-oriented to drive business results. Ensure that the employee understands not just what task is to be performed but what result or outcome is to be achieved. So like the above example, the task is maintaining sufficient inventory *and* projecting into the future to anticipate when new orders need to be placed to avoid shortages.

Similarly, the task must be relevant. This goes to *why* I have to do *what* I have to do. We will visit this in more detail below.

Timely

This is a common pitfall that I see frustrate employees time and time again. A manager gives an employee a task to complete "right away" or "immediately" but fails to define what that means. So when the man-

ager subsequently asks the employee one hour later why the task has not been completed the employee replies in frustration and angst, “Really?! I didn’t know you wanted me to drop everything and get it done within the hour!” Be sure to tell your employee when you want a task completed. If you are going to check in with the employee periodically, let the employee know that too and when that might occur. Employees may feel micromanaged if they are given an assignment with a 30-day window, for example and the manager checks in every week asking, “How is it coming along?” While the manager may be well-intentioned and feel he is being supportive, the employee may feel the manager does not trust him. You have likely heard about helicopter parents. Have you heard about seagull managers? The term is reported to have first been referenced in Ken Blanchard’s 1985 book *Leadership and the One Minute Manager*: “Seagull managers fly in, make a lot of noise, dump on everyone, and then fly out.”³ Fast-forward to 2016 and *Forbes*⁴, and *CEO*⁵ magazines and many more publications all have articles about the woes that befall the workforce operating under this management style. Don’t be one and don’t be perceived as one. Tell your employee, in advance, not only when the task should be completed but that you may check in on him on a weekly basis in the interim. That way the expectation is set and no one should be surprised or frustrated by periodic checks.

Counseling

Now that you have set objective and measurable expectations, what if the employee is not meeting them? How can you best redirect behavior? Once again, focus on measurable performance standards. In addition, use the following tips to help the employee understand the importance of the task and the result if outcomes are not achieved.

Manage the “What” versus the “How”

Your job is to tell employees what to do; you direct, supervise, instruct, train, staff, schedule, and more. You are responsible for overseeing what employees do. However, you may not have to so closely manage *how* they do it. Of course the how is critical in certain tasks, jobs, and industries.

How a nurse pushes a syringe into a patient to administer medication is critical, but whether an administrative assistant produces a financial report in Access or Excel may not be critical so long as the data that is needed is provided. Let go! Empower your employees. I see and read so much more now on employee engagement than I do empowerment. Remember the old classics like, *Zapp! The Lightning of Empowerment*,⁶ or *Who Moved My Cheese?*⁷ Yet it seems to be that the two are irrevocably tied together. I cannot imagine how I can have an actively engaged employee who is not simultaneously empowered. And if I cannot have the former without the latter then empowerment must come first, a condition precedent to engagement. Think about your own personal experiences as a consumer. Have you ever been frustrated as a customer when the clerk waiting on you does not have the authority to do what you ask and it seems like such a simple thing? You want to return an item you purchased, perhaps. You don't want your money back; you only want to exchange the product for another one of a different color. The clerk tells you he is not authorized to make exchanges — only the manager can do that. So you have to stand around and wait 10 minutes until the manager finishes with another customer. Then you find all the manager does is walk over to you, ask what you want, and hand you the item of your choice. A 60-second transaction took you 10 minutes to complete because the clerk was not empowered to do this for you. Everybody loses. You lost time, the clerk lost the ability to help you and certainly did not feel empowered in having to direct you to the manager, and the store may have lost you as a customer. What about the manager? I hope his time could have been better spent performing a management-level task that simply handing me a different item. Lesson learned? Do not micro-manage your employees. Empower them as much as possible. Let go and find the freedom you will both enjoy!

Ask “How” Before “Who”

When something goes wrong, what is the first question we often ask? “Who did it?” is often the first question we ask. While that is an important question, consider making it the second question you ask. Consider making your first question, “How did that happen?” Are there certain pro-

ocols, checks, and balances that are not in place that should be? Then ask, “Who?” as an important second question to ensure the employee(s) involved has the required knowledge, skills, and abilities to perform the assigned tasks.

“I” versus “You” Statements

How often do we tell others what they have (have not) done without really knowing the facts? Have you ever called a customer service department and been told, “You dialed the wrong number.” Then, when you repeat the number you dialed, the person on the other end of the line tells you, “Oh, that’s this number; I guess they transferred their extension over here.” “Aha!,” you think. So I *did* dial the correct number. Then why did you tell me I was wrong? Or how about e-mail or voice mail? Has anyone ever told you, “Hey, you never answered my e-mail message” or “Hey, you never called me back after I left you a voice mail message.”? When, in fact, you did reply but their inbox was full and would not accept any more messages? From these day-to-day experiences of people incorrectly telling us what we did or did not do we learn that it may be better to use “I” rather than “you.” The same applies to managing your employees. Rather than telling your employee what he did or did not do, tell the employee what you do or do not have. For example, “I don’t have the report from you that I requested to have by close of business yesterday.” This gives the employee the opportunity to tell you what he did or did not do without getting frustrated because you have made an inappropriate assumption. For example, he might tell you that he put the report in your inbox at 3:00 p.m. yesterday and there is now so much stuff on top of it that you did not see it.

Why You Do What You Do

Have you ever been frustrated and wondered why an employee was not getting it? Maybe you have talked to the employee once, twice, and maybe even a third time about the same performance problem. Ask yourself this: Having told the employee what (and what not) to do, when was the last time you told the employee why it needs to be done or why it is important?

Adult learning theory contends, among many things, that adult learners seek to understand why.⁸ It is not enough for us to just know what to do, we seek to understand why it should be done. Empowered employees more often than not understand how what they do contributes to the operations of the business, its mission, and more because they have been told why they do what they do. For example, a pharmacy aide is repeatedly told that he must get certain medications into the medication cart no later than 8:00 a.m. Invariably, he repeatedly gets the medications into the cart between 8:10 and 8:15. The employee is frustrated and thinks his boss is a pain and a control freak. What's the big deal? It's just 5 or 10 minutes! What the manager has never told the employee are the implications of those few minutes. What the employee does not know is that the medications are used in surgery and are picked up every 30 minutes at five and 35 minutes after the hour. So when this employee delivers the medications at 10 or 15 minutes after the hour, they will not be picked up for another 20 to 25 minutes and surgery may have to be delayed. This can have a critical and adverse outcome for the patient awaiting that surgery. If the pharmacy aide had known the implications of his actions, he might have taken greater care to be timely. But his manager never told him why, just what.

Speak Up!

How about this scenario: Have you ever been so frustrated with an employee's unsatisfactory performance that instead of giving him more work or new assignments you have just done the work yourself or reassigned it to a coworker? If you do that and say nothing to the employee, how will he learn? How will he know that his performance is unsatisfactory? Your silence may reasonably be interpreted as condoning the unsatisfactory conduct. Not to mention the frustration that a coworker may feel at having to do another employee's work. Remember the 80-20 rule or the Pareto Principle?⁹ It has many applications and basically holds that 80 percent of the effects or results come from 20 percent of the causes. Applied to the workplace, examples include from the half-empty perspective that you spend 80 percent of your time on 20 percent of your employees (the problem employees whom I'll call stinkers) and from the half-full perspective,

20 percent of your employees complete 80 percent of the work (your star performers). Here you may be fostering the latter rule. Why? You have designed it that way by redistributing work assignments. You have taken the work away from your stinkers and given it to your stars. Thus the rule has become a self-fulfilling prophecy. And then what happens to your stars? The shine becomes less and less brilliant, they become less satisfied, engaged, and productive and — oops, they are moving towards the stinker end of the performance spectrum! Do not let that happen. You have a responsibility to expressly tell the employee, whether you think he should know better or not, that the performance level is not meeting expectations. You owe that to yourself, the employee, and the coworkers.

Correcting

So now you are at the point at which you have coached and counseled, and still the employee's performance is not meeting expectations. You have concluded it is time to issue corrective action. Here are a few things to consider.

Corrective versus Disciplinary Action

You may notice I used the term corrective rather than disciplinary action. I find the latter term still used in many employee handbooks. Neither term is good or bad nor right or wrong. I prefer corrective action because it focuses on the purpose of the action rather than on the person. It emphasizes the purpose, which is to correct behavior or to entice the employee to start or stop doing something. Disciplinary action may be read as a punitive term and seems to focus more on the person; e.g., it is punishment of the individual for a job not well done. If you agree and your company uses the latter term in its employee handbook, you might replace “discipline” and “disciplinary action” with “corrective action” next time you update your employee handbook. It's funny in a way. Sometimes a manager may ask me, usually after an employee has been coached and counseled multiple times and is being offered one last chance prior to termination, “But what if I issue discipline and the employee improves?” Isn't that the point? That question tells me there may be something more going on. Be honest with

yourself and your employee. If the problem is more than just performance-based (like attitude) get to the heart of it, define it, and ensure all expectations are clear so the employee can meet them moving forward.

Equal versus Equitable Treatment

This topic was addressed in Chapter 1, but we will revisit it here. Have you ever had an employee tell you that your corrective action was unfair because the employee knows someone else who did the same thing but did not get “written up”? I suspect we all have. First, you know that it is quite likely that you did write the other employee up but this employee just does not know about it, as it should be. Second, and more to the point here, is that even if that is the case — e.g., another employee did do the same thing and did not get written up — so what? This is the difference between equal and equitable treatment. Most managers do not want to treat all their employees exactly the same nor do most employees want to be treated the same as all others, especially your top performers. What rising star wants to work under a compensation system that provides COLAs only and get the same pay increase as everyone else? What employee wants to be written up for excessive lateness when he is caring for a terminally ill child or family member (exclusive of FMLA leave, of course)? Treating employees equitably requires wise use of management discretion. It takes into account all the factors that come into play in any given scenario.

You may decide to not treat two employees equally; you may issue corrective action to one and not another. But that may not be inequitable because the two employees are not similarly situated (see Chapter 1).

Let me take a moment here to share some responses to the question above. What *do* you say when an employee tells you that you are not being fair because a coworker did the same thing and did not get written up? This might happen in the investigatory phase, as you are meeting with the employee to get his side of the story. Or you might hear it for the first time when you issue corrective action or give the employee anything less than an “Excellent” rating on his performance appraisal. How do you respond? I find a common response is “We’re here to talk about you, not your coworker.” That is true but sounds like you are closing the door and

not open to a full investigation of all the facts. I prefer a response that lets the employee know that you heard him and will consider what he shared, and then redirects the employee back to the conversation at hand: “I hear that you think it’s not fair because Christine did the same thing and I will look into that and address that with her if that is the case. For now, I want to focus on my expectations for you.”

Regardless of what you call it, corrective action is generally formal in nature in that it involves a writing of some type that is placed in the employee’s HR file. Some companies use a standard form that managers fill out; others simply use a memo-style approach. In either case, the written document then becomes a part of the employment record.

Employee Acknowledgement

I find a common question is whether the employer should provide a space for and/or require the employee to sign an acknowledgement that the employee has received the written notice of corrective action. There are some advantages and disadvantages regardless of which method you decide to use. Here is a brief, comparative review.

If you do not have a signature line for the employee to indicate his receipt of the form, you may create the opportunity for the employee to later claim, such as at an unemployment insurance (UI) or other administrative agency hearing, that the employee was never notified that he was not meeting expectations. You might overcome this by following a practice of always having another management-level witness present whenever you issue written, corrective action. The disadvantage of witnesses is that the employee could feel as if you or management were “ganging up” on him or not respecting the privacy of this “teachable moment.” The decision of whether or not to have a witness is best made by you. You know your individual employees and for whom you are more likely than not to want a witness present. If you decide to not have a witness and also no signature, then you will bear the burden to show that the employee did, in fact, receive your written notice.

But having a signature line is not all a bed of roses either. How often have you had an employee refuse to sign? I suspect you are nodding yes right

now. This is not uncommon. If the employee does not agree with the content or level of the corrective action, he may be inclined to not sign. Again, there is a strategy you might use to overcome this objection. For instance, on your performance appraisals, you may have a statement under the signature line that reads that the employee's signature does not necessarily indicate agreement with the appraisal but simply acknowledges his receipt of it. Still, even with that disclaimer, employees may still decline to sign the form.

This leads to the third issue as to whether the employer should make the signature a requirement of the corrective action or an option. I prefer the latter as it is usually better received by the employee. In this case, if the employee does not want to sign, the manager may simply write, "Employee declined to sign." I also prefer "declined" rather than "refused." The former is less confrontational. The offer to sign is an invitation, not a mandate, so the employee has the option to accept or decline your invitation to sign.

Managing Emotional Reactions

In any of these steps, particularly counseling and correcting, an employee may respond with one or more emotional reactions. Here are some tips for effectively managing your response to some of the more common emotional reactions.

Anger

Sometimes an employee may become angry when confronted with counseling on performance deficiencies. Your reaction can help de-escalate that emotion. Don't get drawn into the moment; watch the pace, pitch, and volume (PPV) of your own voice. The PPV of an angry person's voice usually increases; he speaks faster, at a higher pitch, and louder. Sometimes it can help to de-escalate this emotional reaction by doing just the opposite. Reduce the PPV of your own voice. Respond in a slow, low, and quiet tone of voice, with pauses between words such that the person may have to actually pause in his own frenetic pace of speech to listen to you. In that moment, you may recapture the person's attention and invite the person to take a break from the conversation and begin again in a few minutes or perhaps even in a few hours or the next day. How productive is the meeting at this

point anyway? The emotion is likely overriding any productivity that could be derived from the meeting. How effective can you be when the person is focused on his own anger? Give the person time to return to a calm state before re-engaging him in the conversation. On another note, keep yourself safe. (See Chapter 5 for tips for avoiding certain legal claims like false imprisonment or intentional infliction of emotional distress, as well as for keeping yourself safe from a potentially violent employee.)

Denial or Blaming

Have you ever counseled an employee only to hear him accept no responsibility and state that the fault is not his but someone else's? As mentioned above, sometimes we may be compelled to tell the person that we are not there to discuss a coworker but to discuss this employee's performance. But if a coworker really is the source of a problem, the employee may hear that you are brushing off his very valid complaint. It may be appropriate to tell the employee that you will address those concerns momentarily and to then ask, before you do so, what responsibility this employee has, if any, for the concerns you have shared with him. The employee's answer will be important in determining the employee's willingness to be accountable, in any part, for the problem at hand. Even a small acknowledgement can go a long way.

For example, let's revisit our inventory control clerk from earlier in this chapter. His response to letting inventory levels fall below par is, "It's not my fault! Bob was on vacation so I couldn't get the requisition signed." We hear two issues here. The employee might not have the "R" in smart instructions. Asking him to maintain the par levels might not have been Realistic if he was constrained by not having the authority to sign off on a requisition or having another resource to do this for him. The second, however is his responsibility to ask for help. So we ask, "I understand you could not get the requisition signed because Bob was on vacation. So tell me what you could have done to have avoided this problem?" Now we cross our fingers and hope the employee recognizes the part he played by his own inaction. If not, then we point out, "If at any time you need something or have a problem getting your job done you need to let me know; doing nothing is not an acceptable response."

The other issues raised by the employee, however, should be addressed so you can determine whether or not they are valid concerns.

Silence

Humorist Josh Billings said, “Silence is one of the hardest arguments to refute.”¹⁰ And isn’t this the truth? How do you engage an employee in a productive conversation when all he does is nod, shrug, and give an occasional “I dunno.” You have probably heard about open- versus closed-ended questions. Here is a great time to try using open-ended questions. Rather than asking questions that can be answered with a “yes” or “no,” ask questions that require a descriptive response. For example, a common question as we wrap up a meeting with an employee may be to ask, “Do you have any questions?” What does the employee almost always say? “No,” a closed-ended response. Or you might ask, “Do you understand what I’m asking?” And, again, you get a closed-ended response, “Yes.” But do you really know that the employee understands your expectations? An open-ended method for asking the same question would be to ask, “OK, just before we wrap up, tell me what you understand my expectation to be.” This cannot be answered with a “yes” or “no” but requires the employee to repeat what he understands you want him to do. If you still get silence or a shrug, then you have the opportunity to again share the expectation and then ask the employee again, in an open-ended way, to tell you what he understands the expectation to be.

Another strategy for overcoming silence can be to offer the employee the opportunity to share his thoughts in writing. Some people just are not good orators; they are not comfortable telling you what is bothering them but could do so in writing. You might offer the employee the opportunity to think overnight about what you have shared and provide you with a written response the next day or by the end of the week.

Tears

Whether they are crocodile tears or real, this emotional reaction can be awkward to manage. First tip: always have a box of tissues in your office. There are few moments more awkward than when a tearful employee has no recourse but to wipe his nose on his sleeve. Keep the tissue box on your

desk, rather than in a drawer, so the employee can take one rather than having to ask for one. Like managing anger, it may also be best to give the employee 5 to 10 minutes to collect himself and then return to the conversation. The question here may be where do you or the employee go during this interim period? That depends upon your office location as well as what is in your office. If you are an HR administrator with confidential files in your office that are unlocked, it may be best to invite the employee to step out and get a drink of water and return rather than leaving the employee alone in your office with access to files. On the other hand, if your office is in a highly trafficked hallway, telling the person to step out into a public area for all to see that he has been crying might not be wise either. Give these points consideration; you may decide that a meeting is best held in a neutral area such as a small conference room or vacant office space. That way, if a break is needed, you can tell the employee that you will step out, give the employee time to compose himself, and then return to continue the meeting.

Tears may also indicate that the employee is dealing with an issue unrelated to work that is personal in nature. If your company has an employee assistance program (EAP), this is a wonderful opportunity to remind the employee of this confidential resource if they need or would like someone else to talk to about work or personal matters that may be impacting work performance. Why do I say confidential? Remember that your EAP counselor is usually either a licensed social worker (LSW) or licensed clinical social worker (LCSW). That license gives the counselor a legal veil of confidentiality such that what the employee tells that counselor (barring a threat to self or others) is truly confidential. The EAP counselor may not disclose the information shared by the employee with the employer without the employee's consent. You, however, cannot provide an employee with absolute confidentiality, whether you are a manager, supervisor, or HR administrator. If you do refer an employee to the EAP, put a note on your calendar to follow up with the employee in a week or two. Tell the employee that you will do so, and then check in with the employee to see how things are going. It has been my experience that once the employee shares his story with the EAP counselor he may be

much more comfortable and willing to share the same story with HR, the supervisor, or manager. Then you can determine what next steps, if any, to take to assist or help the employee.

This is also an opportunity to illustrate the value of HR and how HR can serve as a proverbial firewall for managers and supervisors. If HR has this type of conversation with the employee, personal and possibly protected information may be disclosed, such as information about a medical condition, issues with family members, or substance use/abuse. Too often, the disclosure of that information to a manager precedes corrective action. The employee then has a *prima facie* case to assert discrimination or retaliation for some protected status or activity.

For example, a manager is coaching an employee for unsatisfactory work performance: reports have repeatedly been submitted late and with errors despite previous coaching. When the employee becomes emotional and cries, the supervisor refers her to the EAP. HR then follows up. In the meeting with HR the employee shares that the EAP was a great resource for her. Her family is having some serious financial issues, she recently filed for bankruptcy, and she found out she was pregnant. Put together it was all just overwhelming her. In the interim, she has turned in another report late and with multiple errors; the supervisor issues corrective action. Since the supervisor has no knowledge of the employee's bankruptcy or pregnancy, it would be very difficult for the employee to assert that she is being discriminated against on either of those bases.

Passive-Aggressive

This pattern of behavior may be less gently referred to as being two-faced. This behavior is demonstrated by the employee who is very reticent, polite, and apologetic in your presence, indicating that he is sorry and will do better moving forward. After the employee leaves your office, however, you begin to hear from coworkers that he is complaining about you and the company and unfair treatment, and generally bad-mouthing the organization behind your back. What do you do? Ask the employee about it. You may simply tell him that it has come to your attention that he may be complaining about you or the company. Can you guess what

the employee's first question often is? That's right, "Who told you that?" There is no need to disclose that to the employee. Notice that I indicated you would tell the employee that it has come to your attention that he "may be" complaining. You may simply tell him that who told you is not important; what is important is that he understands that such behavior is not acceptable. Remind the employee of the company's appropriate resources for expressing concerns (e.g., the employee's supervisor, human resources, EAP, confidential hotline). Then advise the employee that if you continue to receive such reports and you find that he is, in fact, engaging in such behavior, it may result in corrective action. Let him know that venting to coworkers and contaminating workplace morale is not acceptable. Here's another common question: "But doesn't that violate the employee's right to freedom of speech?" Remember that freedom of speech is a constitutional matter applicable only to the public sector or government as an employer, not the private sector. And for those of you reading this book and who work in the public sector, even the U.S. Supreme Court has held, "The first amendment does not require a public office to be run as a roundtable for employee complaints over internal office affairs."¹¹

Practical Tips

- Why wait until the employee is onboard? Begin setting expectations in your job interviews; tell candidates about your company's culture, work ethic, core values and your general departmental expectations.
- Don't presume understanding. Use the skills described in this chapter to ensure the employee understands your expectations. Give SMART instructions and ask open-ended questions.
- Don't procrastinate! Do not put off until tomorrow what you can do today. I have seen it happen time and again when a manager puts off coaching, counseling, or correcting, and just as he finally decides to take some type of action, the employee expresses a need for FMLA leave or military leave, files a workers' compensation claim, or informs the employer she is pregnant — in other words,

indicates some protected status or activity that could now make the corrective action look like retaliation.

- Let HR serve as a firewall for managers and supervisors. Remember that you cannot discriminate against what you do not know. So when it comes to personal issues and information about employees, it is best to be shared with HR or the EAP counselor than the employee's direct manager, supervisor, or any person in the employee's chain of command.

Employee, Where Art Thou? Managing Disability and Leave Issues

On March 12, 2012, I had the honor of testifying on behalf of the Society for Human Resource Management (SHRM) before the U.S. Senate Committee on Health, Education, Labor and Pensions hearing on stay-at-work and back-to-work strategies in the private sector. I explained, as I suspect you will agree, that employers are becoming more learned and creative in providing flexible staffing models including:

1. Flex time — permitting employees to work flexible schedules around a “core” set of hours.
2. Compressed work schedules (CWS) and alternative work schedules (AWS) — such as a 4-10 workweek or 8-9-8 pay period in which during the first 8 days of a two-week pay period an employee works 9 hours a day, then 8 hours the next day and is off the last day, usually every other Friday.
3. Job sharing — where two employees may share the duties and work schedule of one full-time equivalent or FTE.
4. Teleworking — permitting employees to work from home or an alternate location.

But life for business owners, managers, and HR professionals is hectic, and navigating the maze of laws with limited resources and personnel can be overwhelming. Despite their merits, the Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), and workers’ compensation laws are sometimes referred to as “the Bermuda