

## THE 'EASY' WAY TO DEAL WITH PROBLEM EMPLOYEES



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### By Steve Bruce

*A longtime employee who gets a “24-hour bug” every other week, usually on a sunny Friday. A sales rep who smashes quota one month but slacks off the next. The line supervisor who is “just a few minutes” late most days. Recognize any of these folks? If you’re in HR, you do.*

Problem employees. You’re not ready to fire them, but you certainly have to do something. In today’s Advisor, courtesy of the Employer Resource Institute®, we get answers from Marie Burke Kenny, an experienced employment law attorney and a partner in the San Diego office of the law firm Luce, Forward, Hamilton & Scripps, LLP.

### Do you have an overarching piece of advice to give employers, right off the bat?

“Starting right at the interviewing stage, the most important thing employers and supervisors can do is to set clear expectations. Employees must understand in very specific terms what is expected of them.

“Many managers believe employees should ‘just know’ what’s expected of them. That’s a big mistake.”

### What should an employer do when an employee has been given clear expectations but still falls short?

“Early intervention is often the key. Supervisors tend to wait and stew on an issue, and by the time they raise it with the employee, they have become too upset about it.”

Kenny says she often hears this from supervisors: “This employee is useless. From day 1, she’s never done her job correctly.” “So I say, ‘It’s been 13 months and you’ve never talked to her about this? Well, she must be doing something right.’

“Supervisors often respond by telling me, ‘I don’t want to put anything she’s doing right in writing; I’m setting her up for termination.’ That is a big mistake. Judges, juries, and arbitrators want to believe the employee was treated fairly, and they want to see documentation that illustrates that the supervisor gave the employee a reasonable and fair opportunity to turn work performance around.”

### Should an employer delve into the reasons an employee is not meeting expectations?

“Pursuing the reasons why is not the appropriate focus; instead, concentrate on what the performance issue is. Give the employee the opportunity to volunteer the information rather than say, for example, ‘I know you’re going through a

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divorce right now,' or 'Have you gone to a psychiatrist recently? You're acting manic.' Don't put yourself in a position in which you judge a person's life or diagnose his or her behaviors in the workplace. "It's more appropriate to meet with the employee to discuss the performance issues and say, at the conclusion of the meeting, 'We've developed a performance action plan here - how can I help you succeed in this job?' That will usually unveil any issues on the employee's mind. The person might say, 'I need a leave of absence,' or 'I need to work part-time for a while,' or 'Actually, I'm seeing a psychiatrist and I'm on medication; we haven't fine-tuned the dosage yet.' Such comments trigger red flags about the employer's duty to accommodate a disability, but it's certainly not up to the supervisor to try to diagnose the reason for the employee's poor performance. Again, it's better to focus on the performance issue itself."

### **How do performance evaluations fit into all this?**

"You never want surprises showing up in the written performance evaluation. I have heard supervisors say, 'This employee has been performing horribly for months, and I'm really keeping a detailed log on it. Boy, wait until he gets that performance evaluation - he's going to be blown out of the water.'

"Supervisors should not store up these comments. Instead, they should provide feedback on an ongoing basis so there are no surprises in the written performance evaluation."