

AUGUST 18, 2015

## WHAT'S ONLINE

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If you haven't been to our website recently, here's exclusive online content you've been missing:



### Employment Law Update for Managers

on the tricky legal issues supervisors face daily.



### Compliance Checklist

to ensure you're in compliance with employment law.

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Is anxiety about management a protected disability?

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Star hire's drug test comes back positive: Should HR let him go?

## Make documentation hold up to scrutiny: 7 must-haves

### ■ What your managers must be recording now

Documentation is the first line of defense in the event of a lawsuit, but many employers struggle to get their managers to create appropriate records of performance and behavior.

Employment law attorney Allison West knows all too well the struggle HR pros face getting managers to create proper documentation.

### Prevent legal problems

Her firm, Employment Practices Specialists, helps companies prevent and resolve employment claims, and she shared her best advice on making documentation bulletproof at the SHRM15 Conference in Las Vegas.

Of course, it's smart to record the good with the bad. But when performance problems arise, West said managers need to include seven points in their documentation:

#### 1. *The unmet expectations*

What goals, policies or standards has the employee not met?

It's good to refer back to a specific job description or a code of conduct, and be specific about why the conduct is a problem.

#### 2. *Behavior that needs to change*

Focus on the conduct alone, not the person, and stick to objective

*(Please see Scrutiny ... on Page 2)*

## Former DOL insider points out OT rule flaws

### ■ 2 major issues explained during Congressional hearing

The war against the DOL's proposed changes to the overtime rules is on.

Testifying on behalf of the U.S. Chamber of Commerce during a House subcommittee hearing, former DOL administrator-turned-attorney Tammy McCutchen tried to shoot holes in the DOL's proposal.

Two of her biggest concerns:

- The salary threshold jump to \$50,440 is more than that of high-cost-of-living states like New York (\$34K) and California (\$37K), which will have a disproportionate impact on states

with a lower cost of living, and

- The threshold is supposed to screen out obviously non-exempt employees, but setting it so high fails to do that.

### What's next for the proposal?

Congress is listening to feedback like this from business groups, and it's expected the GOP will mount some push back against the proposal. But that likely won't happen until the final rules are issued in a few months.

Info: [www.tinyurl.com/house447](http://www.tinyurl.com/house447)

# Scrutiny ...

(continued from Page 1)

observations and details, West says.

Example: If you think a worker is drunk on the job, write what makes you think that. Did the worker slur words together, stumble to the desk, or have alcohol on his or her breath?

It's also good to record examples of how the conduct impacted others and the work environment.

### 3. The employee's explanation for the behavior

It's crucial that documentation reflect the worker's side of the story for several reasons:

- It shows you're acting fairly toward the worker by having a two-way conversation about the issue
- It keeps workers accountable for their actions and records why they believe the issue is happening, and
- It ensures you're getting the full

story, which may reveal info you can use to help the worker improve.

### 4. The action plan

This doesn't have to be as detailed as a performance improvement plan, West says.

But it should include specifics about what steps the worker plans to take to self-correct, and what you'll do to help the employee improve.

### 5. How much time the worker has to correct the problem

Let the worker know when you expect changes to take place.

Avoid vague statements like, "as soon as possible" or "right away."

Instead, say something like, "The report due on the 15th should be free of typographical errors."

### 6. The consequences that will result if the problem persists

Use punishment sparingly, West says. Hold off on using it at the start of a worker's performance issues while you try to coach them to improve.

But when you do have to bring punishment into the discussion, be specific about the actions you'll take.

### 7. The results of follow-up meetings with the worker

Follow-ups are crucial for tracking progress and showing fairness.

In the preceding meeting, you should let workers know what the follow-up will entail, such as:

- What aspect of performance you'll be looking at
- What specific improvements the employee is expected to make
- What additional training, if any, will be given, and
- What the consequences for not improving may be.

After the follow up, detail what happened – both the positives and negatives. Be specific, and document the employee's explanations, too.

*Cite: "Seven Steps to Creating Bulletproof Documentation," a presentation by Allison West at the SHRM15 Conference & Expo in Las Vegas.*

## Sharpen your JUDGMENT

*This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.*

### ■ Is anxiety about management a protected disability?

"Thanks for coming to see me today," HR manager Lynn Rondo said to employee Mandy Wiser. "We need to talk about your latest request for an extension of your leave.

"I'm afraid we can't approve your request," Lynn continued. "In fact, if you don't come back to work, we'll have to let you go."

"But you can't fire me, I have a disability," Mandy said. "You have to accommodate me."

### 'Diagnosed condition'

"The paperwork from your doctor says you suffer from adjustment disorder with anxiety, which stems from your dislike for your manager," Lynn said. "That's not exactly a disability."

"It sure is," Mandy fired back. "It's a doctor-diagnosed condition, and I need leave to get better."

"But you've exhausted your FMLA leave, and we granted you additional leave on top of that already," Lynn said.

"We still don't know when you'll be back to work," Lynn continued.

"But I'm entitled to additional leave under the ADA and state law," Mandy said.

"Once again, an inability to work with your manager isn't a covered disability," Lynn said.

Mandy was fired, and she sued under California's Fair Employment and Housing Act, which mirrors the ADA. She claimed disability discrimination. Did she win?

■ *Make your decision, then please turn to Page 6 for the court's ruling.*

## WHAT'S WORKING IN Human Resources

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# Do prescription meds alone qualify an employee for FMLA leave?

### ■ Worker: 'My medication counts as continuing treatment'

Does this sound like a guy who qualified for FMLA protections?

Kendrick Johnson fell ill (blurred vision and headaches), was diagnosed with high blood pressure, was put on meds and was told to follow up with his doctor – which he didn't do.

After he missed several days of work, his employer, U.S. Steel Tubular Products Inc., determined he wasn't qualified for FMLA leave.

Johnson was then fired.

### 'But I'm getting treated'

Johnson filed a lawsuit, claiming FMLA interference. He argued his prescription medication regimen and the request to follow up with his regular physician qualified as receiving "continuing treatment" under the law.

Therefore, he said he had an FMLA-qualifying medical condition.

His employer fought to get his suit thrown out, claiming he never qualified for FMLA protections – and the court agreed.

It said for his case to proceed, Johnson had to show he either received direct treatment from a healthcare provider two or more times, or a prescription regimen that had to be performed "under the supervision of the health care provider."

His prescription alone, and a note with no timeframe for when to follow up with his doctor, weren't enough to qualify him for FMLA, the court said.

Case dismissed.

*Cite:* Johnson v. U.S. Steel Tubular Products Inc., *U.S. Crt. of App., 8th Cir., No. 13-3786, 2/20/15.*

# EEOC sues employer for discrimination by association, shows what it's looking out for

### ■ Terminated worker's daughter had a disability

A newly-filed lawsuit provides a powerful reminder of just how far the ADA can reach.

The EEOC is suing New Mexico Orthopaedics Associates, accusing it of discriminating against an employee because of her association with a disabled individual – her daughter.

### What managers need to know

While the case hasn't been decided yet, it provides a clear-cut example of what's not allowed under a portion of the ADA that some of your managers may not be aware of.

In a nutshell, the portion of the law the EEOC is invoking says employers can't take an adverse employment

action against an individual because he or she may have to care for – or is closely linked to – a disabled individual.

This case also shows what the EEOC is on the lookout for.

The EEOC is accusing the employer of terminating medical assistant Melissa Yalch because, ostensibly, she may need time off work to care for her daughter – or her daughter may in some way affect the employer/employee relationship.

Such actions, if proven to be true, amount to disability discrimination, according to the EEOC. Stay tuned.

*Cite:* EEOC v. New Mexico Orthopaedics Associates, *U.S. Dist. Crt., Dist. of NM, No. 15-CV-00557, Filed 7/1/15.*

### ■ Abercrombie hijab lawsuit ends in \$44,000 settlement

The headline-making lawsuit between Abercrombie & Fitch and the Muslim applicant it turned down because of her head scarf has finally come to a close.

The clothing retailer declined to hire Samantha Elauf because she wore a scarf known as a hijab as part of her Muslim faith, and the EEOC sued on her behalf claiming religious discrimination.

Abercrombie argued her hijab didn't conform to its "look" policy, and it said it didn't have to relax its policy because Elauf never asked it to – or even mentioned her religion.

The Supreme Court recently overturned an appeals court decision in Abercrombie's favor. At that point, the company said enough was enough and settled the suit for \$44,000 in damages and court costs.

*Cite:* [www.tinyurl.com/hijab447](http://www.tinyurl.com/hijab447)

### ■ Irony alert: Law firm settles its own sex harassment lawsuit

Sometimes even lawyers get hit with allegations that they've run afoul of employment law.

Example: Kylan Wilson, a former employee of Anspach Law in Charlestown, WV, accused one of its attorneys, M. Andrew Brison of sexual harassment.

Wilson claimed Brison, her supervisor, began making unwanted sexual advances toward her shortly after she was hired. Wilson also said she was fired for complaining to management about Brison's actions.

She filed a sex discrimination and retaliation lawsuit.

Anspach said her firing was performance-related, and Brison said he and Wilson were in a voluntary personal relationship, so his actions weren't unwanted.

But before a court could hash it out, Anspach settled for an undisclosed amount.

*Cite:* [www.tinyurl.com/lawfirm447](http://www.tinyurl.com/lawfirm447)

# Experts give their solutions to difficult workplace problems

*HR professionals like you face new questions every day on how to deal with workplace conflict and employment law. In this section, experts answer those real-life questions.*

### Can we ask everyone to sign same non-compete?

**Q:** We've always had our executives sign a non-compete. Now our owner wants us to get lower-level employees to sign the same agreement. Are there any legal risks to doing that?

**A:** Keep in mind that to be enforceable in court, a restrictive covenant usually must be narrowly tailored to a protectable interest, says Meredith Campbell ([mcampbell@shulmanrogers.com](mailto:mcampbell@shulmanrogers.com)), co-chair, Employment and Labor Group at Shulman Rogers ([ShulmanRogers.com](http://ShulmanRogers.com)).

As a result, one-size-fits-all agreements imposed on executives and lower-wage workers alike may not satisfy that standard.

If you're concerned that the document you have now may not be right for all of your employees, it's probably time to check with your lawyer.

### How will EEOC's Title VII ruling affect employers?

**Q:** How should private employers react to the EEOC's ruling that discrimination based on sexual orientation is now a violation of Title VII of the Civil Rights Act?

**A:** Employers nationwide are now well-advised to regard Title VII as providing the same protections to lesbian, gay, transgender and bisexual employees as it has provided to employees based on race, sex, color, religion and national origin, says employment law attorney Wendy Bryant Becker ([wbecker@bgdlegal.com](mailto:wbecker@bgdlegal.com))

of Bingham Greenebaum Doll LLP ([bgdlegal.com](http://bgdlegal.com)).

While the EEOC's opinion on this matter doesn't have the force of law for private employers, its opinions are viewed as persuasive by judges.

Employers can expect to see EEOC charges based on sexual orientation in the future, with Title VII lawsuits to follow where conciliation cannot be reached.

### Unlimited vacation: 2 legal hitches to offering it

**Q:** We've heard about companies offering unlimited vacation and think our workers wouldn't abuse it. What administrative pitfalls are there to consider next?

**A:** To assess if your firm is a good candidate for unlimited vacation, consider two points, says employment law attorney Annie Lau ([alau@laborlawyers.com](mailto:alau@laborlawyers.com)) of Fisher & Phillips LLP ([LaborLawyers.com](http://LaborLawyers.com)). They are:

- **Employee classifications.** For example, if you have a lot of non-exempt workers who need to track their hours, your company may not be a good fit for unlimited vacation.
- **State vacation and pay laws.** Some states view accrued time off as earned compensation and require employers to pay for that time when a worker is terminated. If these laws affect you, expect complications.

*If you have an HR-related question, email it to Christian Schappel at: [cschappel@pbp.com](mailto:cschappel@pbp.com)*

## EFFECTIVE COMMUNICATION

### ■ Employee training: 3 ways to make sure it sticks

Many times employees return from a training session and unfortunately, it's back to "business as usual."

No matter how informative your content is, translating training into actionable job skills your employees are eager to apply is a challenge many managers face.

Here are three tips to create training programs that not only stick, but also help workers succeed at their jobs:

#### 1. Avoid planning a 'talk fest'

Some training programs concentrate on cramming tons of information into the shortest possible amount of time.

Try to avoid that and, instead, offer workers clear recommendations and actionable tips in small, easy-to-understand chunks.

You'll get more interest from employees when you're helping them solve their problems, not just passing on information.

#### 2. Don't be a drag

Bore people and their minds become stones instead of sponges.

Build content that connects to their daily work experiences.

And keep content fresh by asking employees to share their experiences with the training topic.

They'll get more out of sessions by hearing about their co-workers' experiences with the subject, instead of just training tips.

#### 3. Practice role playing

Role playing can be uncomfortable for employees, but it's the best way to help them execute the skills they just learned.

It's also a good way for them to get feedback from managers on what they need to improve.

**Cite:** [www.tinyurl.com/training447](http://www.tinyurl.com/training447)

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## WHAT WORKED FOR OTHER COMPANIES

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Our subscribers come from a broad range of companies, both large and small. In this regular feature, three of them share a success story illustrating ideas you can adapt to your unique situation.

### 1 **HSA strategy helped workers be more active**

We wanted to find a way to spark employees to start making healthier decisions.

After all, healthier employees are happier and more productive.

But we didn't want to make it seem like a chore to change their lifestyle.

We started by adopting a health savings account (HSA). Why?

We liked how it helped employees control their money and health.

Plus, with the help of company

contributions, employees could afford to go to the doctor for more preventive services.

And we knew helping them get to the doctor was a great step toward staying in good health.

#### Small incentives add up

Next, we created incentives for employees to participate in healthy activities.

Example: If they participated in a biometric screening, we contributed money to their HSA.

If they donated blood, we donated to their HSA.

And if they ran a 5K or 10K race, we'd not only pay their entry fee, we'd also donate to their HSA.

The HSA donations weren't bank-breakers. Usually it was just \$100 or \$200 a pop.

We are thrilled with the results. Employees are more active than ever, and we know it's made them healthier and happier.

*(Scott Wise, owner, Scotty's Brewhouse, Indianapolis)*

**REAL PROBLEMS, REAL SOLUTIONS**

### 2 **'Seat Shuffle' helped our employees connect**

We knew it would help employee engagement and retention if our people were constantly building relationships with different co-workers.

But that's not always easy when employees are busy.

So we instituted the "Seat Shuffle." Every few months, we had employees switch seats, so they'd sit next to people they hadn't gotten a chance to know.

In addition, we made sure employees from different departments

like Sales and Marketing all sat together – rather than walling employees off by department.

It started as a completely random seat shuffle, during which everyone in the office would move at once. But as we've grown, things have changed a little to avoid chaos.

#### Grouped by customer

Now we group people into areas based on customer personas.

Example: Sales and Marketing employees who work with customers

in one particular industry – say education – all sit together.

That area will then conduct its own shuffle – rather than moving everyone in the office at once.

The strategy has:

- helped employees make new friends
- led to faster communication between departments, and
- improved customer service – since departments can collaborate easier.

*(Kristen Kenny, director of people operations, HubSpot, Cambridge, MA)*

### 3 **Managing chronic illness saved us \$1.8M**

Managing chronic conditions almost crippled our healthcare plan.

Our health plan is excellent at managing short-term problems, but we found treatment for one type of chronic condition a few employees had was becoming too much to shoulder.

We needed a better way to bring these enormous costs down.

Paying for chronic disease management was our highest cost, and could be close to five times

greater than paying for someone without a chronic condition.

So we did some research and networked with benefits pros and consultants to see if we could find a way to put an end to these exorbitant costs while maintaining quality of care.

#### Focused cost-containment

Eventually we found a cost-containment plan for the specific condition that was driving our claims costs up. Almost immediately we were able to track the savings.

But it wasn't until a year after cost-containment measures went into effect that we saw how much money we actually saved.

Managing healthcare costs for three patients with chronic illness saved us more than \$1.8 million a year.

It was more money than we ever imagined, and we did it without sacrificing quality of care for those employees.

*(Crystal Butler, health benefits supervisor, Markham, Gray & Dennis, Kinston, NC)*

### Employees say bullying is tolerated at work

Here's an alarming stat: More than 70% of employees say their managers don't do much to stop bullying.

Some have seen managers deny, defend or even encourage bullying, a recent Workplace Bullying Institute and Zogby Analytics study found.

Why would managers tolerate any kind of bullying? Researchers suggest managers might not recognize that certain behaviors are forms of bullying.

That's a recipe for disaster if employees who feel they've been bullied at work sue.

And that means blanket "no bullying" policies aren't enough. Give managers and employees specific examples of bullying – and have them sign off on knowing the discipline for it.

Info: [www.tinyurl.com/bully447](http://www.tinyurl.com/bully447)

### New guidance released on ACA's 'Cadillac Tax'

There are a lot of questions surrounding the ACA's "Cadillac Tax," and the IRS just answered many of them with new guidance addressing the calculation and payment of the tax.

Some of the highlights:

- The tax will be paid by "coverage providers" – like an insurer of a

fully-insured plan or an employer providing coverage under an HSA.

- It explains the process of how plan sponsors can go about reimbursing coverage providers for the tax.
- It also explains possible approaches for calculating the cost of coverage under HSAs, FSAs and HRAs.

Info: [www.tinyurl.com/guidance447](http://www.tinyurl.com/guidance447)

### Wellness: Smart bands may soon be regulated by EEOC

Heads up: The EEOC is currently weighing whether health information you obtain about employees through wearables – like smart fitness bands or the Apple Watch – is subject to the ADA's confidentiality rules.

Example: A person's heart rate over a period of time could end up falling under these rules – as could a wealth of other info these devices could soon be advanced enough to collect.

Stay tuned, as it soon could be much more complicated to include these devices in your wellness efforts.

Info: [www.tinyurl.com/wearable447](http://www.tinyurl.com/wearable447)

### Lighter side: 4 foods that make co-workers hate you

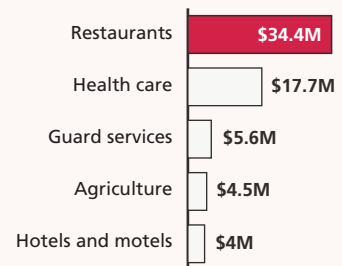
It's not uncommon for time-pressed employees to eat lunch at their desks.

But when workers eat these items,

## WHAT COMPANIES TOLD US

### Top 5 DOL-targeted industries

The industries in which the DOL recovered the most back wages in 2014 (low-wage industries statistics):



Source: Wage and Hour Division (DOL.gov).

These numbers don't just represent the industries with the most FLSA violations; they're also a clear indication of the types of businesses the DOL has under the microscope.

*Each issue of WWHR contains an exclusive survey to give executives insight into what their peers nationwide are thinking and doing.*

they have no regard for co-workers' nostrils. Here are the worst office nasal offenders, according to *The Huffington Post*:

- fish reheated in office microwave
- hot dogs
- kimchi, and
- hard-boiled eggs.

An honorable mention from our office: burnt popcorn.

## Sharpen your judgment... THE DECISION

(See case on Page 2)

No. Mandy lost her case when a court threw it out.

Mandy argued her condition, adjustment disorder with anxiety, which was caused by her stressful interactions with her manager, was a disability covered under California's Fair Employment and Housing Act and, therefore, the ADA.

As a result, she said she should be granted leave as an accommodation so she could be treated.

But the court disagreed. It ruled: "An employee's inability to work under a particular supervisor because of anxiety and stress related to the supervisor's standard oversight ... does not constitute a disability ..."

Simply having an inability to do a job could be enough to qualify someone as "disabled." However, Mandy wasn't plagued by an inability to perform her job – but rather an inability to work under a particular manager, the court said.

### ■ Analysis: Flexibility is best way to avoid legal mess

This ruling has to be music to employers' ears. Just when it was starting to look like courts would allow anything to be considered a disability for which employers need to seek reasonable accommodations, this court draws the line.

Still, this company did the smart thing by working with Mandy to help her get better, until it couldn't bend anymore.

That's the best way to avoid getting burned in court.

**Cite:** Higgins-Williams v. Sutter Medical Foundation, *Crt. of App. of CA, 3rd Dist., No. C073677, 5/26/15. Fictionalized for dramatic effect.*

# 'Retirement-Readiness Week' boosted participation, addressed worries

### ■ Eased veterans' minds, motivated younger workers

Calculating retirement needs can be daunting, even for the most experienced HR pros.

And in our view, the employer's responsibility doesn't end by simply offering a 401(k).

It was also important that our employees understood not only the "how," but also the "why" of our retirement plan.

### Three-day series

To help, we launched "Retirement-Readiness Week" – a three-day series of information sessions and seminars to help our employees navigate the road to retirement.

Our goal for the series was to try to answer the looming questions many workers have about retirement:

- Do I have enough money saved?
- How much should I save?
- Will I be able to pay for health care?
- How can I meet my expenses?

We invited our retirement plan advisor and experts from the Social Security Administration and Medicare to help our employees plan for a successful retirement.

### Unraveling the maze

Understanding the ins and outs of any type of retirement plan can be daunting.

But the experts we invited did an excellent job of explaining confusing standards, regulations and protocols.

Employees were given easy-to-read checklists and guides to help them navigate the system.

Then, our retirement plan provider took our staff through the specifics of

our 401(k) plan and explained how they'll benefit from participation.

He shared tips on how to calculate contribution rates, automatic enrollment, pre-tax and post-tax features, as well as expanded investment options.

Employees were also reminded of the benefits of some of the health/retirement hybrids we offer, like a health savings account (HSA), which can pay for their medical expenses during retirement.

### Case Study: WHAT WORKED, WHAT DIDN'T

### Exit plan within reach

For our more seasoned employees, the seminars helped them see there was a light at the end of the employment tunnel, no matter how far off retirement was for them.

Our younger workers were also motivated by the information shared in the seminars.

They saw an opportunity to grow wealth within the company rather than seeking their fortune elsewhere.

### Encore, encore

The feedback has been awesome, participation in our retirement plan has grown and our staff is demanding an encore.

Many of our staffers remarked that the seminar gave them an enhanced feeling of control and peace of mind on how their money is being handled.

Because of the success of the program – and the changing retirement landscape – we've decided to hold our "Retirement-Readiness Week" every year.

*(Angela Hyde, manager of benefits and compensation, Brotherhood Mutual Insurance Co., Fort Wayne, IN)*

### ■ Is it possible for employees to be overworked and happy?

Employees feel overworked and happy. Could that be possible? If so, is it even safe?

Yes, to the first question. No to the second – and it's something managers must have on their radars.

More than 86% of employees said in a recent Staples Advantage survey they're happy at work. But at the same time, 53% said they're overwhelmed, too.

That's a major burnout risk.

### Know when to step in

As a result, managers need to know when to step in before employee burnout sets in.

The key is to cut back on the issues that overwhelm employees:

- **No down time** – 35% felt they were "always on" because they didn't have enough time to finish work during regular hours. It's so bad, they finish work at home.
- **Balance** – 20% said work-life balance issues were a big reason for considering a job change. On the flip side, a third said the ability to have it contributes to their loyalty.
- **Overload** – Half of employees say they receive too much email, and 25% said they're in needless meetings – both of which hurt their productivity and cause them to put in extra time. To prevent this, managers should make sure their info distribution and invitation lists only include essential people.
- **No breaks** – Nearly half of employees feel they cannot take a break at all, and many feel as though they must eat lunch at their desks. It may be time to re-examine workloads if managers see some employees constantly skipping lunch while others are leaving the office for an hour or more.

**Info:** [www.tinyurl.com/staples447](http://www.tinyurl.com/staples447)

## WHAT WOULD YOU DO?

Companies face competing agendas when dealing with their employees. They must find ways to inspire their people to excel, while controlling costs and staying within the law. Here we present a challenging scenario and ask three executives to explain how they'd handle it.

### Star hire's drug test comes back positive: Should HR send him packing?

#### The Scenario

HR manager Stu Capper was about to get up and go to the break room when he bumped into manager Samantha Cordel outside his office.

"Oh, Stu," she said. "I was just coming to see you. I need your advice on something."

"Hey, Sam," Stu said. "Come on in, the vending machine isn't going anywhere. What's on your mind?"

#### Star candidate, zero tolerance

"There's an issue with the new hire Mark Wills," Samantha explained.

"Really? But you said he was the perfect candidate for the job, and that we had to snatch him up before another company got to him first," Stu said.

"I know, but that was before his drug test

came back positive for pot," Samantha said.

"Oh boy, that is a problem," said Stu. "We have a zero-tolerance drug policy. What does he say about the test?"

"He claims that it's been months since he last smoked weed, and has no idea why the test was positive," Samantha said.

"So he's saying this isn't something he does regularly?" Stu asked.

"Correct. But now I'm not sure what to do," Samantha said. "Mark has everything we need for this position and more. And it's not like he'd be operating machinery and endangering others. He'll be working an office job.

"Still, I realize the policy's there for a reason. Plus, there's a chance he could have just been feeding me a line to hold onto the job. What do you think, Stu?"

If you were Stu, what would you do next?

#### Reader Responses

##### 1 Glen Bontrager, HR manager, Messenger LLC, Auburn, IN

*What Glen would do:* I'd probably stick to the policy in this case and terminate Mark's job offer.

Going forward though, I'd make sure the drug testing requirement comes up in conversations with the applicant before we extend a job offer. That way, candidates have a chance to come clean on their own, and we avoid surprises like Mark's.

*Reason:* It's unfortunate to have to pass on a good candidate. But the policy is there to prevent abuse – like people lying about test results – as well as ensure worker safety.

##### 2 Mary Ellen O'Driscoll, HR director, Block Institute, Brooklyn, NY

*What Mary Ellen would do:* It depends on how the company has handled issues like this in the past and how much leniency we've shown others.

For example: If we've given past applicants a second chance after a failed drug test, I might give Mark the benefit of the doubt and ask him to immediately take another drug test to determine if the first was a false positive.

*Reason:* The most important thing here is to stay fair and consistent as an organization. I'd rather people say our policy is too strict than that we weren't fair and consistent with all our workers.

##### 3 Brad Schriber, Senior VP of Cashiers and HR, State Bank of Taunton, Taunton, MN

*What Brad would do:* Since Mark is a new hire, and likely on probation, I'd stick to the policy in this case and terminate his employment with us.

*Reason:* It'd be one thing if an established employee had failed a drug test, in which case we'd be more willing to give that person a second chance to clean up.

But since Mark is new, we don't have that kind of rapport and trust built, which means it's safest for us to stick to the policy.

#### QUOTES

The mind is the limit. As long as the mind can envision the fact that you can do something, you can do it, as long as you really believe 100%.

Arnold Schwarzenegger

Never give up. Failure and rejection are only the first step to succeeding.

Jim Valvano

Don't compromise yourself. You are all you've got. There is no yesterday, no tomorrow, it's all the same day.

Janis Joplin

Most talented players don't always succeed. Some don't even make the team. It's more what's inside.

Brett Favre

If you think you're too small to have an impact, try going to bed with a mosquito.

Anita Roddick

Just don't give up trying to do what you really want to do. Where there is love and inspiration, I don't think you can go wrong.

Ella Fitzgerald