

SEPTEMBER 1, 2016

## WHAT'S ONLINE

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### Employment Law Update for Managers

on the tricky legal issues supervisors face daily.



### Compliance Checklists

to ensure you're in compliance with employment law.

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## Will your health plan pass DOL's new ACA stress test?

### ■ Compliance will be judged: 6 steps to avoid fines

Employers are entering a critical period for ACA compliance.

Not only has the DOL said it intends to audit every applicable large employer for ACA compliance by 2018, it also hired hundreds of investigators to make good on that goal.

Combine that news with the fact that the first ACA reporting season just came to a close, and it all adds up to one thing: a new wave of DOL audits.

### What employers need to do

While it's certainly debatable whether DOL investigators can sink their teeth into everyone's health plans,

it's critical that employers be ready in case investigators come knocking.

To help, Gary Kushner, president and CEO of consulting and benefits administration firm Kushner & Company, recently gave a presentation in front of hundreds of HR pros on how they can send DOL investigators on their way without having found an ACA violation.

Here is some of his best advice:

#### 1. Review SPD process.

Federal investigators will not only expect employers to have an up-to-date summary plan description (SPD) and/or plan doc, they'll also want proof that it

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

## Perfect storm brewing for student loan benefits?

### ■ CEO: They're mirroring the same path 401(k)s took to relevancy

Think student loan repayment benefits will be another passing fad?

Hold on a second, says Brendon McQueen, CEO of *Tuition.io*, a firm working with employers to erase student loan debt. Although his business makes him a little biased, he's still got a strong argument why it may be a critical, long-term benefit to consider.

### Poised for major growth

He says the same set of circumstances that took the company-sponsored

401(k) from an afterthought in 1982 to a must-have benefit offering exist today for student loan repayment benefits:

- a growing financial crisis (Millennials are saddled with \$30K worth of student loan debt on average)
- bipartisan congressional support to address the issue with legislation, and
- public demand for the benefit.

*Cite: "Helping Employees Become Financially Fit," a presentation by Brendon McQueen at the Dig/Benefits 2016 Conference.*

# Test ...

(continued from Page 1)

was distributed to plan participants and beneficiaries receiving benefits. Some employers don't have that proof, Kushner said.

A simple way to create that proof: Have all relevant parties sign off on a Word document that says, "On X-date, I distributed these SPDs to employees."

**Note:** Apply the same process to your ACA Summary of Benefits and Coverage, and Uniform Glossary. And remember, changes to these docs kick in for plan years beginning on or after April 1 ([www.tinyurl.com/SBC471](http://www.tinyurl.com/SBC471)).

### 2. Check three 'bars' of compliance.

Health plans must meet the Minimum Essential Coverage, Minimum Value and Affordability thresholds to pass muster with the ACA.

Kushner offered a simple, but

easily overlooked, tip for reviewing all three "bars" of compliance: Take the lowest-paid group of workers and see if they meet the thresholds. If so, your coverage will comply with the ACA across your entire workforce.

### 3. Review measurement periods.

Double-check your measurement, stability and administrative period calculations for determining who's a full-time-equivalent employee.

Look to make sure the calculations don't include the more common pitfalls – like using shorter measurement periods than stability periods and skipping the administrative period.

### Notices, 'wraps' and tests

#### 4. Create a process for distributing health and welfare plan notices.

Of the 30-plus ACA requirements that can trigger a \$100 per participant per day (\$500K max) penalty, many involve written notices.

And like with the SPD doc, you must be able to prove delivery. But, again, a Word doc will suffice – like one signed by HR stating: "As part of our open enrollment package, we delivered X notices to employees."

#### 5. Find ways to reduce burdens.

In many cases, a "wraparound" document would reduce employers' compliance burden and Form 5500 filing requirements, Kushner said.

Reason: The wrap doc allows employers to file only one Form 5500. That eliminates the possibility of being penalized for multiple Form 5500s if there are errors.

#### 6. Determine if additional nondiscrimination testing is needed.

Kushner reminded HR pros testing must be performed on any underlying health and welfare plans, and it's well worth the trouble to get outside help.

Reason: If the DOL determines you haven't done the proper testing, it'll audit your plans going back six years.

**Cite:** "ACA and ERISA Compliance: 11 Steps to Avoid (or Survive) a DOL Audit," a presentation by Gary Kushner at the SHRM 2016 Annual Conference & Expo.

## 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.*

### ■ Was quick action enough to win sexual harassment suit?

HR manager Lynn Rondo was checking her email while she waited for employee Dawn Delaney, her next appointment.

Dawn knocked and peeked in. "Hi Lynn. Is now a good time?"

"I was just waiting for you. Have a seat, Dawn. We need to talk about Matt Parker," Lynn said.

### 'I was humiliated'

Dawn's mood changed. "What about that creep? He's gone, right?"

"Yes, he was fired last week," Lynn said. "That's why I wanted to ask, why are you still filing a sexual harassment lawsuit against us?"

"We took your sexual harassment complaint seriously. We investigated Matt's behavior right away, and he ended up being fired because of it," Lynn continued.

"I was humiliated for months before I even filed that complaint," Dawn replied.

"Everyone else on the floor knew what he was like, so there was no way you didn't know," Dawn said.

"No one reported anything prior to your complaint," Lynn said.

Dawn proceeded with her lawsuit, claiming the company should have intervened sooner with Matt – and by not doing so created a hostile work environment for her.

The company fought to get the lawsuit thrown out, arguing it reacted as soon as it could've – that is, after Dawn complained.

Did the company 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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# Ruling: Here's how to craft a job description that fends off ADA claims

### ■ Essential requirement led to company's courtroom victory

Here's an incentive to put a little more time and thought into your job descriptions: One that's well written and applied evenly can help you defeat an ADA lawsuit.

Case in point: Mark Kilcrease applied for a commercial truck driver job with Domenico Transportation Co. after having been unemployed for two years due to the effects of cancer.

### 'You're not protected'

Among other things, the job ad Kilcrease answered required applicants to have:

- a commercial driver's license, and
- three years of recent mountain driving experience (the company said this was required by its insurer).

Domenico rejected Kilcrease's

application, saying he didn't have the required recent experience. Kilcrease claimed not hiring him violated the ADA, but the company stuck to its decision. So he sued under the ADA.

Domenico fought to get the lawsuit thrown out, arguing Kilcrease couldn't fulfill an essential requirement of the job and therefore wasn't a "qualified individual" protected by the ADA.

The court agreed with Domenico, leaning heavily on the job description to make its decision to dismiss the suit.

It said it "will not second guess the employer's judgment when its description is job-related, uniformly enforced, and consistent with business necessity." Case closed.

*Cite:* Kilcrease v. Domenico Transportation Co., *U.S. Ct. of App. 10th Cir., No. 15-1320, 7/12/16.*

# Can you fire employees for 'pleading the Fifth' in investigations? Court says yes

### ■ Workers have their rights, but so do employers

If an employee says something like, "I have the right not to participate in this investigation," then you have the right to say "you're fired."

That was the conclusion of a lawsuit between William Gilman and Edward McNenny, Jr., and their employer Marsh & McLennan Companies, an insurance broker.

### Fired 'for cause' = no benefits

When Marsh was accused of rigging insurance bids, it investigated to see what spurred the allegations.

Gilman and McNenny were asked to speak about their involvement, but they refused. As a result, they were fired for cause and denied separation benefits (stock options, bonuses, etc.).

Both men sued to collect the benefits, claiming they had a personal right to stay silent – and a Fifth Amendment right to avoid self-incrimination.

But a court shot both arguments down. It said an employee does have a personal right to remain silent, but the employer can still punish the employee for that silence.

As for the Fifth Amendment, it only applies when a government entity is involved. And since the investigation wasn't government mandated, the court said the Fifth Amendment didn't apply.

So the "for cause" firing stood.

*Cite:* Gilman v. Marsh & McLennan Cos. Inc., *U.S. Ct. of App., 2nd Cir., No. 15-0603-cv(l), 6/16/16.*

### ■ Company out \$550K for pregnancy discrimination

It's been a rough year for Chipotle Mexican Grill. First, a slew of food safety issues. Now, a jury's saying it must pay \$550,000 to a former employee who filed a pregnancy discrimination lawsuit.

What sealed the company's fate? A manager treated the plaintiff, Doris Nohemi Garcia Hernandez, differently due to her pregnancy.

The manager made her:

- announce to every worker when she was going to the bathroom
- get approval to use the bathroom, and
- endure criticism for leaving her post to use the bathroom.

Other employees were not subjected to this treatment.

In addition, Hernandez was fired after taking time off for a scheduled prenatal doctor's visit. The manager said she wasn't giving 100%.

Chipotle is also liable for back pay and attorney's fees, which have yet to be determined.

*Info:* [www.tinyurl.com/bias-471](http://www.tinyurl.com/bias-471)

### ■ Record keeping, OT violations lead to \$682K settlement

One way employers try to skirt overtime pay is by tracking the days non-exempt staffers work but not the hours they put in on those days.

That very strategy came back to haunt this Texas-based construction firm.

DOL investigators found Allied Foundation Specialists Inc. paid employees a flat rate – even during weeks they worked 45 to 53 hours.

The DOL said Allied only recorded the number of days employees worked and not the actual hours they put in, which violated the FLSA's record keeping rules.

After the investigation, Allied agreed to pay \$682,318 to 161 affected employees.

*Info:* [www.tinyurl.com/record471](http://www.tinyurl.com/record471)

# 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 our harassment policy save us from liability?

**Q:** Our employee handbook clearly outlines the procedure for reporting harassment. But if an employee fails to use it, can we still be held liable for harassment?

**A:** Yes. It's not enough to merely have a harassment policy, courts have said employees must be aware that the policy exists, says Meredith Campbell ([mcampbell@shulmanrogers.com](mailto:mcampbell@shulmanrogers.com)), co-chair, Employment and Labor Group at Shulman Rogers.

In other words, just drafting a policy and putting it in your handbook may not be enough.

You must also effectively communicate the policy to your employees, and this may require not only handbook dissemination and review, but also regular harassment training – even for seasonal and temporary staff.

### How do we combine stress management and wellness?

**Q:** What's the best way to integrate stress management initiatives into our overall wellness program?

**A:** Start small and go from there. For example, encourage occasional 10-minute breaks and walks outside the office, and insist employees take lunch away from their desks, says Celine Vignal, co-founder of Zenytime, a wellness technology company.

Once you've instituted basic policies, start to integrate more programs to help alleviate stress.

For example, Vignal

recommends introducing employees to short breathing exercises. Allowing them to take as little as five minutes a day to perform exercises like that will help them manage their stress.

It's important for employees to keep track of their stress and learn how to manage it. It's also necessary for HR professionals to encourage feedback to learn what's working within the office.

### Can we reassign pregnant worker for safety reasons?

**Q:** Can we reassign a pregnant employee to a different position if we believe it's what's best for her safety – and/or her child's safety?

**A:** Not if it would amount to an "adverse" action – i.e., typically one that would result in lower pay or job status. Generally, such a move violates the Pregnancy Discrimination Act (PDA).

"Even when an employer believes it is acting in an employee's best interest, adverse actions based on assumptions or stereotypes are prohibited," says the EEOC's enforcement guidance document on the PDA ([www.tinyurl.com/PDA371](http://www.tinyurl.com/PDA371)).

Any adverse action based on an assumption or stereotype – even in regards to a worker's attendance, schedules, physical ability to work or commitment to his or her job – is unlawful.

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

## EFFECTIVE COMMUNICATION

### ■ 6 ways to approach workers with suspected drug problems

It's no secret – most managers dread initiating difficult conversations with their employees.

And no conversation is more difficult to start than when a manager suspects an employee has a drug or alcohol problem that may be affecting performance.

#### What to say, what to avoid

How do you broach this topic? Robert Yagoda, executive director of Beach House Center for Recovery, shared some tips in his column at *U.S. News & World Report's* health news site on how to legally and effectively attack this issue.

Some of Yagoda's best advice for managers:

- **Gather evidence.** Document all performance problems with complete dates and times.
- **Meet face to face.** Don't let the problems fester. Meet to discuss the person's performance, which leads us to ...
- **Stick to performance.** Unless you've seen and documented that the person's been impaired on the job, don't suggest he or she has a substance abuse problem. Keep the conversation to performance and what happens if problems aren't corrected.
- **Suggest your EAP.** Inform the employee that if he or she needs help, your EAP is there to offer it. But, again, be careful not to infer that the employee has a substance abuse problem.
- **Stand firm.** It's human nature to want to help someone in need, but don't enable the person by reassigning the employee's essential duties to others, and don't make excuses for the employee.
- **Get help when problems arise.** If a person shows up intoxicated, for example, be ready to refer him or her to your EAP (or HR). Don't wait for things to get worse.

**Cite:** [www.tinyurl.com/usnews471](http://www.tinyurl.com/usnews471)

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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 Incentive/activity combo improved worker health

Like any organization, we wanted employees to be as healthy as possible – physically and mentally.

The question was: How do we set up a wellness program that addressed physical and mental health, AND that people would *want* to participate in.

Eventually, we hit on an incentive program that appears to be very promising.

Here's how it works: Employees can earn points by doing things

targeted to improve their health in certain areas. The points can then be used to “purchase” cool tech toys – like iPads or Fitbits.

#### What employees are doing

Besides some of the more common activities – like walking challenges – employees got points for:

- meeting with a retirement counselor (financial/mental wellness)
- reading books (a known stress-buster)
- eating five fruits and/or

- veggies a day (nutritional wellness)
- getting at least seven hours of sleep a night (physical wellness), and
- participating in yoga or meditation activities (physical/mental wellness).

Employees can track their progress online – and it's working.

It's early, but 70% of employees have participated in a wellness initiative, and many have reported improved health as a result.

*(Nicole Martel, system director, employee well-being strategies, Mercy Health, Cincinnati)*

**REAL PROBLEMS, REAL SOLUTIONS**

### 2 Charity initiative built buzz in the workplace

Recently, we'd noticed that our workplace wasn't as lively as it usually is.

The once vibrant banter between employees had become more subdued.

They weren't unhappy, we'd just hit a patch in which there wasn't as much to be fired up about.

We wanted to change that and find a way to keep employees energized. After all, it could only mean good things for morale and our customers.

So we decided to tap into something our employees were always fired up about: giving back.

A lot of our employees were very philanthropic – participating in food drives, running marathons and dedicating time to support good causes.

#### Keep going, but track it

We elected to foster that spirit even further with a charity initiative we called the “Summer of Greatness.”

On a voluntary basis, we asked employees to form teams of five and

track the hours they spent helping favorite charities.

We gave the team with the most hours after a

one-month period a cash donation in their names to any charity – plus, a nice bonus in their paychecks.

The result? Employees loved the friendly competition, and it created a buzz in the workplace. They were also proud to be giving back, which provided a nice boost to morale.

*(Rick Schepp, chief administrative officer, Kohl's, as presented at the 2016 SHRM Annual Conference & Expo)*

### 3 Field day idea provided boost to annual event

Our company has always had an annual employee appreciation event that employees could invite their families to.

But, after a while, those things can get expensive and lose their luster.

So we decided to get creative to keep our event family-inclusive, appealing and cost-effective.

After some brainstorming, we had a thought: A lot of our employees have school-age kids, so why not host

a more grown up version of a grade school-esque field day?

It ticked all the boxes – families could attend, employees liked the idea and it would keep us on budget.

#### Kickin' it old school

We found a large outdoor area we could utilize, and we hosted activities you'd find at any school field day.

There were:

- arts-and-crafts stations for kids and their parents
- tug of war competitions, and

- bubble soccer games – think regular soccer but with people running around in inflatable bubbles.

It was a big success. People got excited to have a free-for-all day outside where they could be kids again, and it was a great way for people to bond.

We even held costs down by having people bring their favorite dishes.

In fact, it was so successful that people are looking forward to what we're going to do next year.

*(Jessica Garcia, senior HR business partner, Rackspace, San Antonio)*

### **DOL: Have you updated these 2 required posters?**

If you haven't hung up these two revised posters yet, now's the time. They became mandatory on Aug. 1:

- the Federal Minimum Wage poster, and
- the Employee Polygraph Protection Act poster.

What changed? The look of both posters was refreshed and a QR code was added to direct users to the DOL's Wage and Hour Division website.

Not sure which posters you have to post? Go to the DOL's Poster Advisor ([www.tinyurl.com/advisor471](http://www.tinyurl.com/advisor471)).

### **Court: Sexual orientation not covered under Title VII**

A federal appeals court is getting a lot of attention for having just bucked the EEOC by ruling sexual orientation isn't covered under Title VII of the Civil Rights Act.

Still, employers would be wise to take the ruling with a grain of salt.

The court said it had no choice but to rule that way since previous rulings by the circuit said discrimination and harassment based on sexual orientation aren't covered under Title VII.

But it warned it's likely only a matter of time before Congress or the

Supreme Court act to expand Title VII to protect sexual orientation.

Plus, the court reminded employers that nearly half the states have laws that ban sexual orientation discrimination.

*Info: [www.tinyurl.com/court471](http://www.tinyurl.com/court471)*

### **State bans employers from asking interview question**

Asking job seekers about past salaries is becoming taboo.

Want proof? Massachusetts just passed a law prohibiting employers from asking candidates about past salaries until after they've been extended a formal job offer.

Ex-HR-pro-turned-management-advice-writer Suzanne Lucas ([EvilHRLady.org](http://EvilHRLady.org)) recommends recruiters share a salary range instead.

In addition, the Massachusetts law says employees must be allowed to discuss their salaries freely.

*Info: [www.tinyurl.com/salary471](http://www.tinyurl.com/salary471)*

### **Lighter side: Man quits to beat of a different drum**

Here's a guy who knows how to make an entrance ... or rather ... exit.

Joey DeFrancesco became a viral sensation after filming his resignation from the Renaissance Providence Downtown Hotel in Rhode Island

## WHAT COMPANIES TOLD US

### Are you hiring?

What workforce moves is your company planning in the next year?



*Source: "Executive Employer Survey Report, July 2016," by Littler Mendelson.*

Get ready: The competition for talent may be pretty stiff for the foreseeable future as 56% of employers said they plan to add full-time employees over the next 12 months.

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

and posting it to YouTube.

DeFrancesco walked into the hotel with a marching band in tow. And after handing his resignation to his boss, the band broke out in song in the bowels of the hotel.

The video's a few years old now, but it has received 5.3 million views and is still worth a look.

*Info: [www.tinyurl.com/joeyquits471](http://www.tinyurl.com/joeyquits471)*

*Sharpen your judgment...*

**THE DECISION**

*(See case on Page 2)*

Yes. The company won when the lawsuit was dismissed.

The company said it took all the steps it was required to take – launching an investigation immediately after Dawn accused Matt of sexual harassment and terminating Matt after the investigation revealed he was guilty.

Dawn said Matt's firing was too little too late because she endured his offensive behavior for months prior to his firing. She said the company should've acted sooner.

The court disagreed with Dawn, stating she had little evidence to show the company should've known about Matt's offensive behavior prior to her complaint

because no one else had spoken up.

Plus, when she did complain, the company didn't hesitate to investigate and take corrective action. Case dismissed.

#### ■ Analysis: Immediate action speaks volumes

Taking prompt action to investigate and remedy situations like this tends to show courts that you not only want to do the right thing, but also you're doing your best to create an environment that encourages workers to speak up.

One thing to keep in mind, however: The court said the case may have turned out differently if Matt was Dawn's supervisor. It noted that it's much easier for a plaintiff to show a company should've known about offensive conduct when the offending employee is a supervisor/manager.

*Cite: EEOC v. Autozone Inc., U.S. Dist. Ct. W.D. TN, No. 14-02760, 7/13/16. Fictionalized for dramatic effect.*

# Enrollment event lightened HR's load, answered employee questions

■ *How we made our jobs easier and helped workers at the same time*

When we made some changes to our health plan, we knew employees would have questions.

And we wanted to address them in the most efficient way possible.

That's why we decided to host a benefits fair to kick off open enrollment.

### Multiple birds, one stone

But in addition to our health plan provider, we also invited our retirement plan and life insurance vendors as well. This allowed us to make the most of the event.

The goal was to give employees face-to-face time with benefits experts so they could get answers and advice in a more personal way.

For an entire day, employees had access to all our benefits providers as well as our entire HR team to discuss anything and everything they wanted to know.

### Here's what drew participants in

To drive participation to the benefits fair we relied on some traditional tactics.

In addition to the usual swag, our vendors had prize drawings, and I put together a number of gift baskets to raffle off to employees.

Plus, we used some unique incentives to bring workers in.

### While you're here ...

Example: We offered free flu shots during the event. This benefited us on a number of levels.

First, it increased participation in the fair.

Second, it allowed us to take care

of a critical task – getting employees vaccinated – without the administrative hassles of putting together a separate flu-shot event.

### A friendly reminder

With the flu-shot example in mind, we looked for other ways to use the all-day benefits event to make HR's life a little easier.

Another thing we did involved our flex spending accounts (FSAs).

Generally, the same employees drag their feet when it comes to turning in the necessary forms each year.

Tracking these staffers down and reminding them to turn in their forms can be a time-consuming task. So we brought them to us.

When FSA stragglers came through the benefits fair, we reminded them about their missing paperwork.

Then, to make the process easier for them (and us), we had the forms right there for the employees to fill out.

It was another way for us to kill multiple birds with one stone.

### New enrollment staple

The benefits fair helped us explain the health plan changes to employees – and much, much more.

We received a slew of unsolicited comments from employees about how much they loved the event.

And because of the way the event was structured, we were able to take a number of tasks off of HR's plate.

The event was such a success that we're holding it again this year.

*(Ashley Lotts, HR assistant, Shenandoah University, Winchester, VA)*

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

### ■ EEOC task force reveals 7 best ways to stop harassment

Over the past year and a half, an 16-member EEOC task force comprised of academics, attorneys and reps from advocacy groups and unions has been tasked with finding ways to stymie harassment at work.

The task force's research is over, and it just issued a report offering employers the best practices it found to curb harassment.

### Top strategies listed

The highlights:

- **Conduct bystander intervention training.** Used to combat sexual violence on school campuses, it empowers co-workers and gives them tools to intervene when they witness harassing behavior.
- **Conduct workplace civility training.** The idea is to promote respect and civility in the workplace rather than focusing on "what not to do."
- **Stress how to report/complain.** Make sure your anti-harassment policy – particularly details on how to report/complain about harassment – is frequently communicated to employees.
- **Offer multiple points of contact.** Make sure employees have a range of methods and points of contact they can use to report offensive behavior.
- **Run tests.** Periodically test your reporting system to assess how well it works and how serious managers treat complaints.
- **Hold managers accountable.** Make sure your mid-level managers and front-line supervisors are held accountable – through the use of metrics and performance reviews – for how they respond to workplace harassment.
- **Get data.** Conduct regular employee surveys to assess the extent to which harassment is affecting your organization.

**Info:** [www.tinyurl.com/report471](http://www.tinyurl.com/report471)

## 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.

### 'Loose cannon' is getting fired: How can HR keep him from making a scene?

#### The Scenario

Stu was reading the morning paper, when manager Nancy Smith knocked on his door.

"Hey, Stu," said Nancy. "Do you have a few minutes to talk?"

"Sure, Nancy," Stu said. "What's up?"

"Well, yesterday I had a meeting with the other managers," Nancy said, closing the door. "About Dan Hokum."

"I heard his performance has been a problem, and he has been a little on edge lately," Stu said. "That true?"

#### 'Afraid he might do something'

"That's not the half of it," Nancy said. "Last week, Dan lost another client, and he screamed at some of the other sales reps."

"Hmm," Stu said. "So are you thinking about letting him go?"

"Yes. All the sales managers agree that Dan needs to go," Nancy said. "No matter how much we've talked to him about his behavior, he won't tone it down."

"And now I'm afraid he'll do something when I go to fire him," Nancy said.

"Like he'll make a scene?" Stu asked.

"And potentially more too," Nancy said. "Dan's never hurt anybody, but when he gets angry he doesn't hold back."

"So I've heard," Stu said.

"You know where I'm coming from, Stu. What exactly should I do here?" Nancy asked. "I'm really nervous Dan will do something drastic."

"Well, I hope it won't come to that, but it's always good to take precautions," Stu said. "I'll look over our policies and options, and get back to you later today."

If you were Stu, what would you do?

We make sure that our GM and an HR rep are present, as well as the employee's union rep (if applicable).

If Dan still has personal effects at the office and we were really worried about his behavior, we'd arrange to have security escort him while he collects his things.

**Reason:** These are guidelines we follow to keep everyone as safe as possible.

#### 3 Rachel Atkins, HR coordinator, Vermont Center for Crime Victim Services, Waterbury, VT

**What Rachel would do:** I'd advise Nancy to do it when the office is quiet and as empty as possible. She should also pack Dan's belongings and have him pick them up later.

But before she does anything, I'd have her check with our EAP for more advice.

**Reason:** I'd have her seek additional help because you never know what might happen in these situations, and the EAP's advice may help prevent things from getting heated in the first place. These are precautions I take every time.

#### QUOTES

**B**uckle up, and know that it's going to be a tremendous amount of work, but embrace it.

Tory Burch

**F**ar and away the best prize that life offers is the chance to work hard at work worth doing.

Theodore Roosevelt

**I**f you are not fired with enthusiasm, you will be fired with enthusiasm.

Vince Lombardi

**T**he greatest mistake you can make in life is to continually be afraid you will make one.

Elbert Hubbard

**R**un to the fire; don't hide from it.

Meg Whitman

**I**f you have an idea, you have to believe in yourself or no one else will.

Sarah Michelle Gellar

**T**he man who can drive himself further once the effort gets painful is the man who will win.

Roger Bannister

#### Reader Responses

##### 1 Jennifer White, HR manager, Penobscot Community Health Care, Bangor, ME

**What Jennifer would do:** I'd suggest that Nancy fire Dan at the start of his next day. After all, he might be mad if he worked just to get fired later in the day.

Dan's last check should be printed and ready to hand off, and I'd consider hiring a security guard for the day.

Then, I'd make sure all other managers were aware of what was going on, and have an email ready to send out to the rest of the office explaining that Dan was let go.

**Reason:** Since Dan was affecting a lot of people, it'd be good for them to know he's gone so we can get back to business as usual.

##### 2 Carlos Yanez-Estrada, HR business partner, ABM Industries, Denver

**What Carlos would do:** When we've had to terminate employees and we were worried about their reaction, we've done it off-site.