

AUGUST 16, 2017

WHAT'S ONLINE

www.WhatsWorkinginHR.com

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



Managers' Update for Employment Law

To help supervisors deal with the tricky legal issues they face daily.



Compliance Checklist

To ensure your company is in compliance with employment law.

WHAT'S INSIDE

2 Sharpen Your Judgment

Is saying you want to hire a 'new face' age discrimination?

3 Employment Law Update

Yes, one word can create a hostile work environment, especially if it's [this](#) word

4 Answers to Tough HR Questions

What interview questions can reveal candidates' cultural fit?

6 News You Can Use

Healthcare reform update: What will Congress do next?

8 What Would You Do?

Employee leading critical project commits fireable offense: 'But he apologized!'

2 FMLA rulings are bad news for your compliance efforts

■ Why it just got easier to sue you, and how to stay safe

If you must fire a person who's taken leave under the Family and Medical Leave Act (FMLA), it just became even more important for you to have rock-solid evidence the firing would've occurred regardless of the leave.

Here's why: [It just got easier to sue you for FMLA retaliation.](#)

This is the result of two court rulings.

'No direct evidence needed'

The first ruling involved Joseph Egan, a projects manager for the Delaware River Port Authority who took intermittent FMLA leave to deal with migraine headaches.

Egan was eventually terminated after being told his position was eliminated. But Egan speculated it was the result of his supervisor not liking the fact that he took leave.

So Egan sued Delaware River Port Authority, claiming FMLA retaliation.

The Port Authority fought to get his lawsuit thrown out because Egan presented no direct evidence his termination was the result of his leave.

Egan simply said, in his opinion, his supervisor seemed upset over the leave.

What happened next is sure to ruffle the feathers of a lot of employers. The

(Please see FMLA ... on Page 2)

DOL seeking a 'do over' on overtime rules

■ Questions the feds want employers to answer about FLSA

It looks like changes are coming for the FLSA's overtime rules after all.

The DOL just issued a Request for Information (RFI) asking for public input on 11 questions related to the white collar exemptions and salary level, in hopes of updating the rules.

The many forms the rule could take

Some of the questions:

- Should the 2004 salary level of \$455 a week be updated for inflation, and if so, how?

- Should different salary levels apply to different employers (based on size, region, state, etc.)?
- Should each professional exemption have its own salary level?
- How did preparations for the DOL's previously issued (and enjoined) salary level of \$913 a week affect employers?
- Should exempt status be determined solely by duties?

The comment period is open until Sept. 25, 2017.

Info: www.tinyurl.com/RFI493

FMLA ...

(continued from Page 1)

court sided with Egan, allowing his lawsuit to move on. It ruled that in order for Egan's suit to proceed he didn't need to provide direct evidence that his leave led to his termination.

It said the lawsuit could proceed as a "mixed-motive" case if there is any evidence from which a reasonable jury could conclude FMLA leave was a factor in the employment decision.

The result? Egan's lawsuit is proceeding, and the Port Authority is facing an expensive legal battle or settlement.

Cite: Egan v. Delaware River Port Authority, *U.S. Ct. of App., 3rd Cir.*, No. 16-1471, 3/21/17.

'FMLA just has to be a factor'

The second ruling involved Cassandra Woods, a substance abuse

counselor with START Treatment & Recovery Centers Inc.

By all accounts, Woods struggled in her job. At one point, START said she was failing to achieve "required outcomes" in "compliance" and "documentation."

So it gave her enhanced training. But the training didn't help, and she was eventually put on 90-day probation.

Woods suffers from severe anemia and other conditions, and on several occasions she took FMLA leave.

While Woods was on probation, she was hospitalized for a week. START granted FMLA leave for that time. But 12 days after Woods returned, her supervisor proposed firing her, and Woods was fired a week later.

Woods then filed a lawsuit against START. She claimed she was fired in retaliation for taking leave. START, on the other hand, argued she was fired for poor performance.

The district court ruled Woods was required to demonstrate that her FMLA leave was the "but for" cause of her termination – i.e. she would not have been fired "but for" her leave.

In the jury's eyes, Woods failed in that regard, and her case was dismissed.

But an appeals court overturned that ruling, allowed her case to proceed and it effectively made it easier for employees to pursue retaliation claims.

The appeals court said Woods only needed to demonstrate that her FMLA leave was a "motivating factor" in her termination.

In other words, to prevail, Woods only needed to prove her leave was a negative factor in (or part of) START's decision to terminate her.

So the court is sending her lawsuit back to trial where a jury will be asked to determine if her claims meet the lower standard for retaliation.

Bottom line: Moving forward START's (like the Port Authority's) documentation of the decision-making processes will be put to the test.

Cite: Woods v. START Treatment & Recovery Centers, *U.S. Ct. of App., 2nd Cir.*, No. 16-1318-cv, 7/19/17.

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 saying you want to hire a 'new face' age discrimination?

HR manager Lynn Rondo was just about to enter her office in the morning when she was greeted by company attorney Eric Bressler.

"I'm glad I caught you on the way in," Eric said. "Do you have a minute to talk about Darren Jarvis?"

"I've got time before my morning meeting," Lynn said. "What's up?"

Replaced with a younger man

"Darren is suing us," Eric said. "He said his firing was the result of age discrimination."

Lynn spit coffee all over her travel mug. "That's crazy. We fired him because he was no longer qualified for his job."

"How so?" Eric asked.

"Darren had been our IT manager for years. But when we added a call center, his duties changed. He had no experience with call centers, he seemed overwhelmed and his performance suffered.

"So we had to replace him with a new face ... someone with experience running IT in a call center."

"Well, Darren says his manager used that phrase 'new face' numerous times while breaking the news to him," Eric said. "To Darren, that meant we wanted to hire someone younger, which we did."

"First of all, Darren is 61. His replacement is 50. That's not a big difference," Lynn said. "Secondly, 'new face' isn't code for 'someone younger.' We're fighting his lawsuit."

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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The \$1.8M question: Did company have to accommodate narcotic user?

■ **Ruling: Employers have to get ADA's interactive process right**

Heads up: A new ruling shows that enforcing a drug policy – and failing to at least engage in the ADA's interactive process – with those taking prescription medications, can cost you.

Taking a hard-line stand with its drug policy to fire an employee for taking prescription drugs just cost Snohomish Public Utilities District No. 1 in Everett, WA, \$1.8 million in damages.

Positive test = pink slip

Cynthia Stewart worked in customer service for the district, and she suffered from chronic and debilitating migraines. Her doctor prescribed the narcotic Dilaudid to deal with her migraines.

The district's fitness for duty policy prohibited employees from working under the influence of drugs or alcohol.

When Stewart was ordered to take a drug test at work, which she failed, she was fired. This was despite her doctor sending a letter to the employer explaining that she could work after taking Dilaudid.

Stewart then filed a disability discrimination lawsuit against the district, which pointed to its fitness for duty policy in its defense.

But the court said the employer failed to reasonably accommodate, or at least seek to accommodate, Stewart.

In awarding her damages, the court said the district wrongly chose to address her drug use through a discipline process rather than an interactive one (as mandated under the ADA).

Cite: Stewart v. Snohomish County PUD No. 1, *U.S. Dist. Ct., W.D., WA, Seattle, No. C16-0020-jcc, 6/21/17.*

Yes, one word can create a hostile work environment – especially, if it's *this* word

■ **Manager's 'extreme isolated act of discrimination' can trigger lawsuit**

All it takes is a single “extreme isolated act of discrimination” by a manager or supervisor to get your company sued for creating a hostile work environment, a court just ruled.

One example of such an act: While working on a fence removal project as employees of the staffing firm STI Group, Atron Castleberry and John Brown (who are African-American) were told by their supervisor that if they “ni**er-rigged” the fence, they would be fired.

'N-word' carries a lot of weight

Both men eventually sued, alleging harassment and discrimination.

STI fought the charges by arguing the incident didn't rise to the level of

harassment or discrimination because a single, isolated incident couldn't be “severe or pervasive” enough to create a hostile environment.

But the court disagreed and refused to throw out the lawsuit, so STI is facing a prolonged legal battle or settlement.

While admitting isolated incidents will not amount to harassment unless extremely serious, the court acknowledged: “Perhaps no single act can more quickly alter the conditions of employment and create an abusive working environment than the use of an unambiguously racial epithet such as [the “n-word”] by a supervisor ...”

Cite: Castleberry v. STI Group, *U.S. Ct. of App., 3rd Cir., No. 16-3131, 7/14/17.*

■ **Interviewer's comment comes back to cost employer \$60K+**

An interviewer failed to keep his thoughts to himself in front of a job candidate, and now his employer is out \$60K, plus legal costs.

What happened? When Joseph Bednarick applied for an appeals officer position with the Pennsylvania Office of Public Records, he interviewed with the office's executive director.

During the interview, the EEOC claims the director expressed concerns that Bednarick – who had 30 years of experience – might not have a long tenure in the office because he might be nearing retirement. So the EEOC filed an age discrimination lawsuit against the office.

But rather than fight the lawsuit, the office decided to settle the case by paying \$60,000 and legal costs.

Info: www.tinyurl.com/leoc493

■ **The price of workplace bullying? \$3M**

These actions, by supervisors no less, clearly crossed the line – and now the employer is footing the bill.

John Barrie was an analyst at the California Department of Transportation, and he had a disability that caused severe reactions to certain chemicals (like perfumes and cleaning supplies). So he asked that his co-workers not wear perfume or use certain cleaning supplies in his office.

It worked ... for a while. But when supervisors stopped the accommodations, he filed an internal complaint. Barrie said his supervisors then retaliated against him. He said he was transferred to the office lobby without explanation, his supervisors called him an “idiot” and “jerk,” cleaning products were used in his office and his lumbar pillow was soaked in perfume.

Barrie then filed a lawsuit against his employer, and a jury awarded him \$3 million.

Info: www.tinyurl.com/bully493

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.

What should we do when unhappy employee resigns?

Q: If an employee is leaving under bad terms, what should we do when he or she resigns?

A: There are at least three things employers should do when any employee resigns, says employment law attorney Richard Hathaway (rhathaway@krcl.com) of the firm Kane Russell Coleman & Logan PC. They are:

- **Develop/follow exit protocol.** Follow your protocol for terminations. Don't have one? It's wise to prepare one. Following the same protocol for everyone can avoid the appearance of favoritism/bias.
- **Save the personnel file.** Make sure the employee doesn't walk off with it (this happens). You'll need it in the event of a lawsuit involving the employee.
- **Preserve electronic data.** Save the person's computer and emails. Having backups of work files and email could help determine whether the employee had ill intentions. And consider limiting their access to proprietary info.

What interview questions can reveal cultural fit?

Q: Can you give us some interview questions that can help us determine if a candidate is a good *cultural fit* for our company?

A: Yes. Here are two questions used at financial services firm Kabbage (www.Kabbage.com) to uncover qualities that allow

people to succeed in its culture, according to Amy Zimmerman, head of global people operations and Jen Richard, head of learning and development:

- **What are three negative qualities someone close to you would say you possess?** Look for candidates who understand what their true negatives are and are also willing to admit them.
- **Ask them to add fractions.** For example, "What is $\frac{3}{4}$ plus $\frac{1}{2}$?" This isn't about math skills. Kabbage is fine with them reaching for a calculator. Look for how they handle unexpected problems.

Man paid more than women: Is it a violation?

Q: If we pay a female less than a male who is doing the same job at the same location, are we violating the Equal Pay Act?

A: Not if the man's higher pay is based on one of four factors, says this FAQ from the EEOC: www.tinyurl.com/PayAct493.

Those factors:

- a seniority system based on length of employment
- a merit system rewarding exceptional job performance
- a quality/amount-of-work incentive system, or
- another factor tied to operations.

If you have an HR-related question, email it to Christian Schappel at: cschappel@pbp.com

EFFECTIVE COMMUNICATION

■ 3 performance review ideas worth stealing

It's no secret the performance review process is painful for managers and employees.

Even if a manager has nothing but glowing things to say about an employee, a lot of prep work and goal setting goes into those talks.

As a result, Tony Delmercado, COO of Hawke Media, tried to find a way to make the process less back-breaking for himself and the managers in his company – and he hit on several ideas that worked.

Ease the pain

Here are some of our favorite performance review tips, from the ones Delmercado shared on *Entrepreneur.com*, that you can pass along to your management team:

1. Pick three or four things you want to say. These talking points create a framework for the discussion.

Narrowing down the discussion topics will also help the reviewer be succinct in his or her feedback, and it prevents bombarding the employee with so much info that he or she leaves unsure of what to do next.

2. Document progress and when it occurs. In between reviews (whether annual, bi-annual or quarterly), give employees feedback and note their progress.

In other words, document achievements and problems when they occur.

Delmercado warns that if managers don't do this, they run the risk of basing employees' reviews on what happened in just the few weeks or month prior to the review.

3. Give employees the chance to review their managers. Get feedback on how managers interact with subordinates and conduct reviews.

This helps employees feel empowered, and it can improve the review process as well.

For more, visit:
www.tinyurl.com/entrepreneur493

WHAT WORKED FOR OTHER COMPANIES

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 **We did the math to acquire top talent**

Some job applicants we made offers to turned us down.

Their reasoning? The starting salary we offered wasn't what they were expecting.

Now we know our offer was right in line with the rest of the market, but if candidates didn't see it that way, we had to find another way to convince them this was the best place for them.

Thankfully, we had an ace up our sleeve. We offered a robust benefits

package that most of our competitors couldn't match.

But to a lot of candidates, benefits alone aren't sexy – money is.

Broke it down into dollars

So here's what we did: We put the value of the benefits we provide, in addition to our base salary offer, into a clear and easy-to-read total compensation statement.

This statement displays the monetary value of our health benefits, health savings account

contributions and 401(k) match, which we know is better than the majority of what our competitors offer.

The result? Candidates began to realize that when you add everything up – which we did for them – their total compensation with us would be really tough to match.

Some even saw that they'd be making more with us than they expected.

Now it's easier to acquire talent.

(Michael Strzalka, VP of HR, Cobham Mission Systems, Orchard Park, NY)

**REAL
PROBLEMS,
REAL
SOLUTIONS**

2 **Unique way to make sure emails get read**

I have to send a lot of colleagues and employees a detailed email report on a regular basis.

But over time, people started paying less and less attention to it.

Basically, I'd compile all the data, email the report – and they'd hit "delete."

Sound familiar?

For the sake of the business, I had to find a way to get people to pay more attention to the data.

By chance, I happened to make a change to get people to pay attention to the message.

Something a little different

I was on vacation in a mountain range when the data I share became available. So I pulled out my cell phone, which I was using to document the trip anyway, and gave a quick verbal report while my wife taped it.

It took a few takes, and I used free tools, such as a teleprompter app to help me script and say it all. I also

added graphics with other free apps and hit send from a social media platform.

It appealed to a broader group of colleagues and employees. They all finally paid attention.

So I've continued to do shoots at different places. It keeps recipients interested in where I'll show up next and what I'll tell them.

(Jay Miller, director of customer insights, Fidelity Investments, Covington, KY, as presented at the CXFusion 2017 conference in Las Vegas)

3 **'Pre-kickoff' parties helped with changes**

The future looked bright for our company. We had just received approval for a number of technology upgrades.

The only problem? We knew the transition was going to be difficult.

For one thing, implementing the new systems and programs was going to take time, and each would be done in different stages.

As soon as we got familiar with one, our employees would have

another thrown at them.

Although we knew the process would ultimately be beneficial, it'd be stressful reaching the finish line.

Create excitement

So each time we shifted focus to a new stage in the project, we held a "pre-kickoff" party to get everyone jazzed.

We got everyone together (including people from IT, so employees could see who'd be helping them with the transition) and offered snacks like pizza and ice cream.

Then we outlined what we expected to happen with the next stage in the transition, the different deadlines we'd like to hit and how it would impact different departments.

We also gave everyone time to voice any concerns they had about the transition.

Between the discussions and the snacks, everyone grew more excited than nervous about the changes, which has helped with the transition.

(Abbey Moran, payroll and treasury manager, XO Communications, Herndon, VA)

Healthcare reform update: What's the next step?

The Senate's ACA repeal bill fell one vote short of eliminating the employer and individual mandates for good.

Now the GOP has to go back to the drawing board on what to do about Obamacare.

The White House says "repeal and replace" is still possible. Meanwhile, some senators are saying the GOP must now focus on "replace" efforts alone – i.e., crafting legislation that alters existing health law.

First on the to-do list for many in Congress: stabilizing the volatile individual market with much more "limited" legislation that aims to keep premiums down and insurance companies in the market.

Lawmakers in the House and Senate are currently in discussions on how to craft a bill to meet those goals.

We'll keep you posted.

Info: www.tinyurl.com/health493

DOJ says Title VII doesn't protect sexual orientation

There's a split in the courts about whether sexual orientation discrimination is prohibited by Title VII of the Civil Rights Act.

The issue is likely headed to the

Supreme Court, but the Department of Justice (DOJ) just gave its two cents on the issue.

In a brief it filed in a sexual orientation discrimination lawsuit, the DOJ said Title VII does not cover employment "discrimination based on sexual orientation."

In addition, it said any efforts to broaden the scope of Title VII's protections should be directed to Congress and not the courts.

Info: www.tinyurl.com/lgbt493

Why you should encourage staff to take a vacation

Vacation time can help fuel better performance, a recent study found.

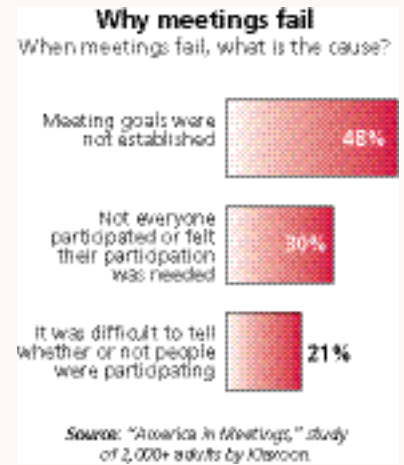
Software firm Namely analyzed data from 125,000+ employees its HR software serves and found that those who received high marks during performance reviews took an average of 19 vacation days per year. Meanwhile, average performers took just 14 days.

Info: www.tinyurl.com/namely493

Lighter side: 4 horrible interview mistakes

A post on *Reddit.com* posed a simple question to employers: *What was the worst way a candidate messed up a job interview with your company?*

WHAT EMPLOYEES TOLD US



What makes meetings succeed?

- A relevant topic – 54%
- Working off an agenda – 48%
- Taking decisive action – 48%, and
- Everyone getting to speak – 40%.

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

Some of the best responses:

- Candidate expected her mom to come into the interview with her.
- Candidate forgot the name of the startup he founded only a year ago.
- Candidate's mom called to follow up on interview and added "she's single, by the way."
- Candidate arrived 10 minutes late, took the clock off the wall, adjusted it and insisted he was on time.

Sharpen your judgment...

THE DECISION

(See case on Page 2)

Yes. The company won. A court threw out Darren's suit.

Darren said he was a victim of age discrimination, claiming the company said numerous times it wanted a "new face" in his position, and it replaced him with a younger man.

The company fought those claims, saying Darren was terminated for performance reasons. As proof, it offered up a memo its CEO wrote prior to Darren's termination that said, "We need to continue to work with [Darren] to overcome his shortcomings. At the same time, we should be exploring other alternatives for management of IT."

The court sided with the employer, giving little credence

to the age difference between Darren and his replacement.

It said, "The comment about a 'new face' was facially and contextually neutral when made to [Darren]. No reasonable fact finder could hold otherwise." It also said the phrase was a textbook example of a "stray remark."

■ Analysis: Managers must watch what they say

Despite the win, the employer still spent a pretty penny in legal fees fighting this lawsuit – all because of a "stray remark" an employee took the wrong way.

The lesson: Make sure your managers avoid broad, subjective statements like that, especially during hiring and firing discussions. It's best to stick to specific examples of performance and/or conduct.

Cite: *Aulick v. Skybridge Americas Inc., U.S. Ct. of App., 8th Cir., No. 16-2648, 6/19/17. Fictionalized for dramatic effect.*

3-pronged attack helped stop double-digit health cost increases

■ *How we got 91% of employees to take a health screening*

We had endured double-digit increases in health premiums for three years in a row.

That had to change, and we felt the best way to control costs was to implement a wellness program that helped employees control their individual health risks.

So we came up with a three-pronged wellness strategy that generated a 91% participation rate in health screenings and a nearly three-to-one return on investment.

Prong No. 1: Incentives

First, we offered a high-deductible, low-premium health plan and offered to turn it into a no-deductible, low-premium health plan if employees hit a few targets.

At the start, in exchange for taking a health screening and meeting health goals assigned to them – from medication adherence, to cholesterol and weight loss goals – we covered employees' deductibles (\$1,125 for single employees and \$2,250 for families).

We also looked to offer (and help fund) something for every employee.

Examples: We had walking groups, Fitbit challenges, sports leagues (like softball and basketball) and on-site fitness equipment.

We even partnered with a local church and got access to its gym.

Not convenient enough? We offered \$300 in reimbursements if workers wanted to use another fitness center.

Prong No. 2: Over-communication

We committed to touching base with every employee.

For starters, we sent emails to every employee explaining the offerings. Then we circulated newsletters around

our office. We even put newsletters in our restrooms called "Bathroom Greets." They talked about the benefits of wellness and the health screenings.

Plus, we did phone blasts – calling employees' homes with a recorded message. The idea was to spread the message to spouses, who were also eligible to participate.

Finally, we hung electronic signs throughout our facility with the dates on-site health screenings would be held.

One concern employees did have: "Would their health info be kept private?" Yes.

And to address that concern, we assured them no individual's health info would be shared with HR.

Prong No. 3: Leadership

To be successful, we needed management to champion the cause.

So we included fitness-related goals in managers' incentive packages – so wellness became a part of their annual performance evaluations.

This got managers involved in communicating our wellness programs to our workforce. It also got them involved in wellness coaching.

Now, managers are working out right alongside our employees.

The payoff

With nearly our entire workforce (91%) getting screened now, a lot of employees have been able to reduce their health risk factors.

Result: At one point, we'd gone five years without any premium increases.

(Kevin Robinson, wellness manager, BAE Systems, in conjunction with Clay Davis, clinical director/physician assistant, Marathon Health, Kingsport, TN)

Case Study:
WHAT
WORKED,
WHAT
DIDN'T

■ What's the optimum number of interviewers to have?

Research shows that the more people you have interviewing job candidates, the greater your chances are of making the right hire.

But you likely don't want to throw candidates in front of dozens of interviewers.

So what's the real sweet spot ... the amount of interviewers you can put in front of a candidate and be reasonably sure you'll make the best hiring decision?

The answer is either three or four.

The case for 4

After years of putting candidates through a dozen interviewers, Google decided that may be overkill.

So Google looked at past hiring data to see how many interviewers' scores substantially improved its ability to decide who to hire.

Result? It found four interviewers were enough to decide who should be hired with 86% confidence. Each additional interviewer, only grew that number by less than one percent.

In addition, Google found that its panel of 12 interviewers would've made the same hiring decision 94% of the time as a panel of four.

The case for 3

Those findings mirror a similar study conducted last year by The Behavioural Insights Team, a U.K. firm aiming to help people make better decisions through science. It asked 398 people to rate hypothetical candidates (with one always being the strongest).

Result? When candidates were very similar, one interviewer made the best choice just 49% of the time. But three interviewers increased the odds to 63%.

When candidates are more varied, one interviewer made the correct call 84% of the time. Add two more interviewers to the mix, and the odds of success jump to 94%.

Info: www.tinyurl.com/hiring493

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.

Employee leading critical project commits fireable offense: 'But he apologized!'

The Scenario

HR manager Stu Capper walked into department manager Kelly Fox's office to break some bad news to her.

"Kelly, I'm sorry to say this, but we're going to have to let Nolan Wilson go."

"Wait, what? If this is about yesterday, he apologized profusely for that," Kelly said.

"Doesn't matter," Stu responded. "He showed up drunk after lunch yesterday afternoon, and we can't allow that."

Special circumstances

"Stu, I understand that's normally a fireable offense, but can't we make an exception here?" Kelly asked. "You and I both know Nolan's tremendously talented, and he's the head of that major project we need to wrap up before year end."

"If we let him go, we don't have anyone who can do his job," Kelly continued. "And taking time to find and hire a replacement will put us way behind schedule – not to mention cost us a lot of money."

"Kelly, this is a serious policy violation," Stu said. "If we don't fire him now, we'll be setting a terrible precedent."

Co-workers will be unhappy

"I get that," Kelly said. "But consider this. Nolan is not only a great talent, he's also well-liked by his teammates. They trust him, and they listen to him."

"Firing him now, in the middle of this big project, won't sit well with his co-workers. It could be a big hit to morale."

If you were Stu, what would you do or say next?

Reader Responses

1 Kelly Mixon, HR manager, SumnerOne, St. Louis

What Kelly would do: I'd be upfront with the manager, explaining that this is a drug and alcohol free workplace, and our policies reflect that. And since Nolan violated those policies, he can't remain with the company.

I'd be willing to hire a temp or help Kelly reshuffle her workforce to get the project done, even if that means not being able to hit deadline.

Reason: Not getting the project completed on time may be a sacrifice we have to live with. We have to think about what's good long term for this company.

2 Becky Wertz, office manager, Hilltop Lab Animals Inc., Scottdale, PA

What Becky would do: The rules are the rules, and Nolan's actions aren't tolerable. He has to go.

As for the project, I'd try to help in

any way I can – whether it's volunteering to pitch in myself or seeing if people higher up than me, or managers from other departments, are willing to step in.

Reason: It may seem to Kelly that there's nobody who can step in to fill Nolan's shoes, but maybe that's not the case if we look outside of her immediate department.

3 Dawn Bohlinger, HR director, Optimum Therapies, Eau Claire, WI

What Dawn would do: I'd look at our disciplinary protocol and how we've treated similar offenders in the past. We have to treat Nolan the same as we've treated others who've violated the same policy – which likely means he must be terminated.

As for his team, I'd frame this as an opportunity for someone to step up and fill his shoes. This could help us flush out a future leader at our company.

Reason: If we fired others in the past for the same actions, we have to terminate Nolan. If we don't, we're basically allowing that type of behavior to continue.

QUOTES

You are not here merely to make a living. You are here in order to enable the world to live more amply, with greater vision, with a finer spirit of hope and achievement.

Woodrow Wilson

An ounce of performance is worth a pound of promises.

Mae West

Never tell people how to do things. Tell them what to do, and they will surprise you with their ingenuity.

George S. Patton

Money is only a tool. It will take you wherever you wish, but it will not replace you as the driver.

Ayn Rand

Power means happiness; power means hard work and sacrifice.

Beyonce Knowles

I am tomorrow, or some future day, what I establish today. I am today what I established yesterday – or some previous day.

Harvey
Spencer Lewis