

# A Manager's Guide to Dealing With Attendance Problems



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# MANAGING EMPLOYEES WITH ATTENDANCE PROBLEMS

A famous comedian once said, “Eighty percent of success is showing up.”

Many managers would agree. Name an excuse (car trouble, alarm clocks that didn’t go off, babysitters that didn’t show up, etc.) and some manager, somewhere, has heard it. And, perhaps, not known quite how to handle it, especially when the problem is chronic, i.e., long-term and resistant to change, despite repeated attempts to discipline or motivate.

Getting an employee to show up on time, every day, would seem to be a simple matter. But these days, you really can’t simply say “Be here or be fired” when an employee walks through the door late or not at all—especially when you throw in legal factors like the following, which complicate matters considerably.

- **Many employee illnesses and medical conditions fall under the protection of the federal Americans with Disabilities Act (ADA).**

*Complication:* Cracking down on a “disabled” employee’s attendance problems may be considered discrimination. Add to this problem the fact that the definition of what is a “disability” seems to be changing all the time. And the lengths to which an employer must go to accommodate a disability have also been extended again and again.

- **The federal Family and Medical Leave Act (FMLA) grants some employees (those in companies with 50 or more employees) up to 12 weeks of unpaid leave, overriding the leave policies of many companies. Some state leave acts are even more generous.**

*Complication:* The FMLA says that employees don’t have to take the time all at once. The end result may be that they’re entitled to a few days (or a few hours) of leave here or there, creating an administrative nightmare.

- **The intersection of certain laws, such as the FMLA and ADA, with the Pregnancy Discrimination Act (PDA), for example, has made compliance with all three laws increasingly complex. Trying to figure out their relationship to an absenteeism policy opens up the potential for all kinds of management mistakes to be made through inadvertent ignorance.**

*Complication:* The PDA mandates that pregnant employees be treated like any other temporarily disabled employee. But under the FMLA, it may be against the law for a manager to count a sick day if it’s due to morning sickness, or to otherwise penalize a pregnant employee under a regular absenteeism policy. And medical complications that threaten the employee or her pregnancy may be covered under the ADA, requiring you to tolerate absences well beyond what’s laid out in any sick leave policy.

- **Discrepancies in the way you apply penalties under absenteeism policies often show up in discrimination charges brought under Title VII of the Civil Rights Act of 1964 and similar state laws. For example, you may be sued for religious discrimination if you refuse to allow employees to use personal days in order to observe religious holidays.**
- **Sensitive personal activities often serve as attendance tinder that demand outside intervention for solutions.**

Examples:

1. A manager docked some employees' holiday pay when they missed the day after a holiday because of a snowstorm. The decision was overturned by the court because the policy was applied inconsistently across the workforce.
2. One employee blamed her poor attendance on chronic fatigue syndrome. A court agreed that regular and predictable attendance was a requirement of the job and her discharge was justified.
3. Another employee wanted her absences negated because she was taking infertility treatments. A court agreed with her.
4. Still another worker used menstrual cramps as her excuse for excessive absences. A court didn't buy that one.

*Managing Employees With Attendance Problems* is designed to help you work your way through the legal maze of understanding and upholding absenteeism policies, without making costly mistakes. This booklet breaks down into four sections.

Take the **QUIZ** to see how well you're coping with the legal issues surrounding absenteeism and lateness problems now. Then read through the **LEGAL** section for a discussion of how major federal laws impact attendance procedures.

In the last two sections, bone up on **PRACTICAL WAYS** to solve absenteeism problems. Review the four **CASE STUDIES** on how to apply the techniques in real life. Then consider how you might use the do's and don'ts that follow to discipline and/or motivate changes in employee attendance patterns.

## QUIZ: TEST YOUR LEGAL KNOWLEDGE OF ABSENTEEISM

**1. Shortly after a black employee complains about stress from loud noise in the workplace, you fire him for missing too many days. He blames his absences on the stress and says you're being unfair; he has a nervous condition which makes it hard for him to work in a noisy environment, but when he asked to move to an office job in a quieter place, you said no — even though you let a white employee in similar straits make the move. When he threatens to sue, you know:**

- a) You may be in trouble, because it *looks* like you discriminated, even if you didn't.
- b) You made a sound decision — the white employee was qualified to take an office job; the black employee wasn't.
- c) "Stress" doesn't qualify as a disability, so when he blew the absenteeism limit, you had no choice but to let him go.
- d) The link to the absenteeism policy is too convoluted to make legal sense.

**2. A Jewish employee wants to take two personal days to observe important religious holidays. Your policy doesn't mention religion as one of the reasons an employee is entitled to a paid day off. Employees are supposed to reserve personal days for "business purposes" which cannot be conducted outside normal working hours. *Upshot:* You turn him down, then suggest he take the time as unpaid leave. This decision was:**

- a) Right on the money. There are no exceptions to this policy, and "religion" isn't listed there.
- b) The right one, because you know for a fact that the employee's not that religious.
- c) Possibly off the mark, since nothing in the policy specifically *prohibits* the use of personal days for religious holidays.
- d) Dead wrong. To refuse to grant religious holidays as paid time off is always considered religious discrimination.

**3. An employee has a habit of calling in sick on either a Monday or a Friday, on the day before or after a holiday or the day following his vacation. He gives you a list of vague symptoms when you ask for the details — fatigue and generic aches and pains involving his head, back, or just “all over.” The smartest way to handle this situation is to:**

- a) Confront the employee, accuse him of “faking,” and see what he says.
- b) Ask the employee to bring a doctor’s note, verifying that he is sick, from now on.
- c) Explain that his pattern of absences raises the suspicion that he is not always sick when he says he is.
- d) Try to limit the employee’s future absences, not to punish his past behavior.

**4. A female employee calls you at home to explain why she won’t be in to work the next day. It’s an emergency, she says — her teenage son had an accident and totaled her only car. Without transportation, she can’t even drive her kids to school, let alone make it to the office. She wants you to okay the time it takes to fix the car as personal days.**

***Problem:* You can okay personal days only in the case of an “emergency” and only with two days’ advance notice. You tell her:**

- a) Sorry, but the days will count as unexcused absences. You warn her that if she misses too many days, she’ll be fired.
- b) Car trouble is not an emergency; the accident didn’t happen on the way to work, so the employee had time to make other arrangements.
- c) You would have excused the absence if she had given the two days’ notice, but she didn’t.
- d) Ordinarily, you might consider giving her a break, but lately, there’s been a lot of abuses, and you have to set an example some time.

**5. A woman who’s due to work overtime refuses to do it at the last minute. *Reason:* She must go straight home to care for her nine-year-old son, who is sick. If she doesn’t leave right now, her son will be left alone, since her babysitter can’t stay a second past her usual 5:00 p.m. departure time. Your best option is to:**

- a) Force her to stay — by threatening to fire her if she doesn’t.
- b) Let her go, since you know there are other employees ready and willing to work the shift.
- c) Let her go, but discipline her for leaving.
- d) Leave the decision entirely up to her — but make her understand you won’t be responsible for the consequences.

**6. An employee becomes sick at work, and is forced to go home, after breathing in fumes which make him sick to his stomach. When his illness gets worse, a doctor concludes he is suffering from exposure to pesticides. Upon a recommendation by his psychiatrist, he requests a one-month leave to recover; it’s granted.**

***Problem:* He keeps putting off the date he’s scheduled to return. During one of these “mental health” extensions, he heads for a surfing convention, not exactly the mark of a sick man. Your next step is to:**

- a) Suspend him — even though he’s followed company policy to the letter and submitted a doctor’s note for every absence.
- b) Go ahead and fire him, since it’s obvious he’s been abusing the system.
- c) Fire him the minute he slips up even once in following the policy.
- d) Tell him attending the convention showed poor judgment on his part; if he ever does it again, he could lose his job.

**7. Tormented by hostile co-workers who harass him because he is black, one employee begins to call in sick more and more often. His manager has heard about the worst of the abuses, but he feels there's not a lot he can do to stop it. Eventually, though, the absenteeism policy kicks in, and he's forced to fire the employee for missing too many days. What the manager did was:**

- a) Foolish. Now the employee's got everything he needs to build a strong case of race discrimination.
- b) Smart. One set of circumstances had nothing to do with the other.
- c) Retaliation. Firing the employee, on top of every other humiliation he suffered, only added to the harassment.
- d) Acceptable. A policy violation is a policy violation, regardless of what problems the employee faces on the job.

**8. One of your employees routinely shows up for work late, sometimes by as much as an hour. One day, he doesn't bother to come in at all. When he arrives the next day, and acts as if nothing happened, you demand an explanation. He tells you he was at jury duty. You fire him for not giving notice. The discharge was:**

- a) Way out of line, since jury duty is a valid excuse to miss work.
- b) Well within your rights. You fired him for not notifying you he wouldn't be in, not for participating in jury duty.
- c) Just about your only course of action, given the employee's history of pulling these stunts.
- d) Not the best choice. Hearing his reason, you owed the employee another chance.

**9. A manager decides to address what she sees as an unacceptable attendance record. She warns the employee that missing even one more day will negatively affect her next performance appraisal.**

**The employee reminds the manager that she suffers from migraine headaches, which strike without warning, and are so severe, she**

**literally cannot function, let alone drive a car, when she is in the grips of one. Three months later, the employee is fired for poor attendance. She sues under the Americans with Disabilities Act. Her chances of winning her case are:**

- a) Terrible. Being out of the office without warning is disruptive and unfair to the employees who do come in.
- b) Not good. Her "disability" comes and goes; she sometimes goes for months without getting a headache.
- c) Decent. Her headaches may not have been very predictable or active, but they thoroughly "disabled" her.
- d) Excellent. This manager did not do nearly enough to accommodate the employee's disability.

## **AND THE ENVELOPE, PLEASE...**

*The following answers work to your best advantage if you take them as general guidelines. Every case of lateness or absenteeism is different, and the decisions you make should be weighed against your own state and local laws and provisions in your company's policies. Don't worry if you missed a few questions — forewarned is forearmed.*

**1. Correct answer: A.** Many discrimination cases begin with no more evidence than what's presented right here — a black employee who is able to show he was treated differently than a white employee in similar circumstances. And tentative, or confusing, ties to the law can sometimes be the rule, not the exception (D), when it comes to employee lawsuits.

The B argument — that the black employee did not have the qualifications to take an office job — did not convince the court which heard it. Even though the employee admitted that he had no clerical or computer skills, the court reasoned that an entry-level job could have been found for him, had the manager been motivated to try.



A generic case of “stress” might not pass legal muster as a disability (C), but if an underlying nervous condition causes the stress symptoms — and it’s aggravated by a noisy workplace — it may require some kind of accommodation, even if transfer is not a reasonable option.

**2. Correct answer: C.** Since the policy did not expressly prohibit the use of personal days for religious reasons, an arbitrator ruled the manager had no good reason to turn down the employee’s request.

Few policies, if any, list every situation which may fall beneath them in practice (A). And companies aren’t required by law to give *any* personal days, if they decide not to. However, if your company does offer this benefit, be consistent in how you interpret the policy. One factor in this employee’s favor rested in the unequal way personal days were doled out; employees took the time to consult with travel agents, get their hair cut, and for other “frivolous” things — one reason why the firm “no” for a religious holiday appeared to be discriminatory.

Finally, it’s never up to a manager to judge how devoutly an employee may practice his/her religion (B). The beliefs must merely be sincerely held to qualify for protection under Title VII.

**3. Only A is flat out wrong.** Any time you decide to confront an employee, it pays to have a clear idea of the outcome you expect. To accuse an employee of “faking it” will likely result only in anger and defensiveness — and bring you no closer to a solution.

The rest of the answers hold more promise. All indicate that you have noticed the employee’s behavior, find it unacceptable, and insist that he participate in its solution.

**4. None of the above.** An arbitrator said all of those answers missed the mark. The employee did not have access to another vehicle, including taxi service, lived too far away from co-workers to get a ride, and, as a single mother, could not arrange care for her children without a car.

Because the accident was unpredictable and caused a genuine crisis in her life, the employee had a legitimate emergency and deserved to be excused.

The arbitrator found it unreasonable for the company to cling to the two days’ advance notice (C), since the employee gave notice as soon as she knew about the accident. And, in general, the employer’s list of emergencies was just a little “too neat and tidy” to work well as policy (B). It has every right to check abuses (D), but its rule-making authority is not absolute.

**5. Correct answer: B.** Finding another employee to work overtime, is the only option that makes complete sense. If other options are available, managers have a duty to use them. Courts often look at what’s “reasonable” first; you don’t win any points for being completely unyielding in the way you apply a policy, absenteeism included. Managers owe workers more than a rigid recital of the rules.

When a worker’s family tugs in the opposite direction from his/her job, it’s a fair bet the family is going to win, so threats (like in A and D) are pretty useless.

If the employee knew her child was sick and unattended, the manager should have handled the situation as if the employee herself were sick. Discipline in any form would be inappropriate (C), since the employee did nothing wrong.

**6. Correct answer: D, give the surfer another chance.** The manager who suspended the employee (A), and later fired him for failing to submit a single doctor’s note (C), got his wrists slapped by an arbitrator.

*Reason:* Even though the employee showed poor judgment in attending the surfing convention, it’s clear that he did become seriously ill after his exposure to pesticides — and it’s no surprise that he needed time to recuperate. Therefore, it’s debatable whether he was, in fact, deliberately abusing the system (B).

**7. Correct answers: A and C.** The manager's actions were both foolish and retaliatory. Once a manager knows about harassment, he or she is required to stop the behavior cold, not turn a cold shoulder to what's happening. And considering the context, this manager might be seen as trying to bend over backward to remove an employee who's "causing trouble," whether he started it or not.

The harassment the employee suffered on the job goes hand in hand with his absenteeism problem; his daily trauma created a stress "chain reaction" and led directly to his illness. To ignore this fact (B) is not an intelligent choice on the manager's part.

Finally, companies create policies to help managers make better decisions. Good implementation of a policy never occurs in a vacuum; to pretend otherwise (D) undermines every reason a policy is written in the first place.

**8. Correct answers: B and C.** You're taking issue with the sloppy way the employee gave you notice of his impending jury duty, and not with his obligation to serve. A court agreed that the employee had a history of "unacceptable tardiness and absenteeism" and deserved to be fired.

If an employee doesn't have this one's sorry work record, the A and D answers might have complicated the notice question. Managers can get into legal trouble if they try to pressure employees not to serve on juries, or act in a way which shows they are "hostile" to jury service or think their own interests outweigh it.

**9. Correct answer: D.** According to the court, migraine headaches are indeed a physiological disorder and they contributed greatly to the absences which got the employee fired — twin underpinnings to a successful ADA case.

As for A, the argument that accommodation creates inconveniences or disruptions for other employees has not won over many courts, who tend to see the workplace as having more resources and being more flexible than the employee with the disability.

The argument that the employee's disability "comes and goes" (B) or occurs too rarely to be "predictable" (C) tries to get mileage out of the requirement that a disability must affect a major life activity before it comes under ADA protection. Here, the court emphasized that being unable to drive or to carry out most normal, everyday tasks rendered the employee too impaired to work. And work counts as a major life activity.

## **UNDERSTANDING THE LEGAL EFFECTS OF THE FMLA AND ADA**

Here's a brief rundown of how issues surrounding absenteeism must be interpreted under two major federal laws. Specifically, the way you carry out a policy when it comes to dubbing an absence "excused" or "unexcused," or whether you decide to play hard ball or be lenient in the face of an employee's disability, will directly affect how well your company is able to meet its responsibility to comply.

### **Family and Medical Leave Act (FMLA)**

If your company has 50 or more employees, you must factor the FMLA into your absenteeism decisions. Some state family/medical leave laws cover employers with fewer than 50 employees, so make sure you know what the law says where you're located.

Most employers have no-fault absenteeism policies, meaning that the excuse doesn't matter as much as the absence; if you rack up enough days, you're out. FMLA regulations make excuses count. For example, pregnancy is now defined as a *serious health condition*, which means that the excuse for an absence *will* matter.

How? If your company is subject to the FMLA, you may not be allowed to count pregnancy-related absences as a policy violation, or view the accumulation of missed days with discipline or discharge in mind. Here are some cases to keep in mind when applying FMLA or its sister law, the Pregnancy Discrimination Act (PDA).



**FMLA Case #1:** An employee had been fired for excessive absenteeism. She claimed in court that the company enforced its attendance policy more strictly to retaliate against her for taking FMLA-covered leave.

The company countered that her termination was justified since she had 18 occurrences of absenteeism during a one-year period; company policy allowed six to eight occurrences.

A court allowed the lawsuit to proceed. *Reasons:* Every supervisor defined the term “occurrence” differently, which left the policy wide open to interpretation and manipulation. Not only that, but placing her on probation after she returned from FMLA leave, and then retroactively revoking her ability to substitute annual leave for sick leave in order to avoid running afoul of the policy, suggested that the company’s flexible application of the policy to the detriment of the employee was a pretext for retaliation. (*Norman v. Southern Guaranty Insurance Co.*)

*Policy pointer:* “No-fault” attendance policies under which an employer tracks occurrences of employee absences can run afoul of the FMLA because they do not differentiate the cause of each absence. To make sure your no-fault policy is FMLA-compliant, you must exempt absences for hospitalization, severe illness, chronic conditions, and other FMLA-qualifying conditions.

**FMLA Case #2:** According to company policy, employees were issued a half point for absences accompanied by a doctor’s note and two points for absences without a doctor’s note. Once employees accrued 15 points in a six-month period, they were terminated. No points were assessed for absences resulting from a workplace injury.

An employee missed several days of work during a three-month period thanks to a workplace injury. She was not assessed points for these absences. But she was assessed points for other absences during this period. Eventually, she came close to her 15 points so she was warned of impending termination.

Shortly after, the employee was fired, only to be rehired after she proved that two previous absences were related to her injury. But she wasn’t so lucky a second time when she was terminated for earning too many points on the heels of a five-day absence.

Believing she had been a victim of retaliation, the employee marched into court and argued that she should not have been assessed so many points because she provided her employer with a doctor’s note for the absences that pushed her past 15 points. Both the company and a court, however, added up all the absences outside of those associated with the employee’s injury and found that she still accrued more than 15 points. Plus, her initial termination could not be seen as evidence of a retaliatory motive because the company immediately rectified its mistake. (*Borcky v. Maytag Corporation*)

*Lessons learned:* When working under an attendance policy based on points, it’s imperative that points are assessed fairly, accurately and consistently. Make sure the policy clearly spells out what kinds of absences will result in the accrual of points. Then, provide all managers and supervisors with a list of all potential absence infractions and their corresponding points.

**FMLA Case #3:** Company policy called for the termination of any new hire who missed more than three days of work during the 90-day probation period — including a worker who suffered a miscarriage that rendered her unable to work for more than two weeks.

The employee claimed that the probationary attendance policy had a disparate impact on pregnant employees. However, both a district court and a court of appeals disagreed, ruling that there was no evidence that the employee was treated any differently than any other probationary employee who missed work. (*Stout v. Baxter Healthcare*)

## Americans with Disabilities Act (ADA)

The ADA only protects an employee who is able to do the job *with or without* accommodation. It does not require employers to rewrite job descriptions to eliminate anything that's difficult for the employee to do — such as come to work every day, on time. An employee who can't meet the job's *essential functions* — despite all attempts at accommodation — isn't qualified to do the job at all. Here are two cases to expand your working knowledge of the ADA.

**ADA Case #1:** A worker with a poor attendance record went on a disability leave. After his return, he asked for a flex-time schedule as an accommodation. The company refused, stating that it needed him to show up for work on time, and that if he were unable to do so, he'd need a doctor's note. He was later fired for absenteeism, and filed a lawsuit against the company, claiming that by not accommodating him with flex-time and by firing him, it violated the ADA.

*Appeals court:* Attendance is an essential function of the worker's job, and his requested accommodation wouldn't "be enough to ensure [his] regular and predictable presence at work." Case dismissed. (*Hypes v. First Commerce Corp.*)

**ADA Case #2:** An employee suffered from an obsessive-compulsive disorder that prevented her from arriving to work on time. Her employer accommodated her by allowing her to come in any time during the 24-hour period she was scheduled to work. This accommodation was unsuccessful, so the employee asked to work from home. But the company refused, as per company policy, because she was already in the disciplinary process for her shoddy attendance. After she was fired for excessive tardiness, she sued. A court ruled the employee's accommodation request should have been granted. *Reason:* The company could not consider her ineligible to work from home due to her disability-related absences; other employees were permitted to work from home, so it was reasonable to allow this employee to do so. (*Humphrey v. Memorial Hospitals Assoc.*)

## ABSENTEEISM: STAYING OUT OF LEGAL TRAPS

A manager must consistently practice two strategies to effectively enforce an absenteeism policy — and avoid legal mistakes in the process. He or she must:

1. Search high and low for solutions to individual employee attendance or lateness problems; and
2. Be dedicated to recording every step of the process from first warning to "last chance" to discharge.

**Case #1:** An employee, whose job required her to work extensive overtime, informed her supervisor that she could not safely work the overtime assigned to her. In response to her supervisor's request, the employee then provided a doctor's note explaining that she was taking medication that caused sedation. But the note provided no further explanation of her medical condition.

As a result, her supervisor advised her of her rights and responsibilities under the FMLA, and required her to provide written certification. When the doctor failed to specify the employee's medical problem and the employee refused to provide additional information, the company fired her.

The employee sued, but a court dismissed her claim. *Reason:* While the company complied with its duties under the FMLA, the employee failed to shoulder her burden by completing the necessary certification. (*Bailey v. Southwest Gas Co.*)

**Case #2:** When an employee filed a lawsuit under the FMLA, her company argued that she hadn't worked the necessary number of hours to be covered by the law (at least 1,250 hours for the 12 months before the leave is needed). The employee countered that the company had often made her come in early, and that those extra unrecorded minutes should be counted toward her total hours worked.

Not so, said a court. It found no reason to dispute the accuracy of the employee's time sheets — especially since she had filled them out herself and signed off on them, indicating they were accurate. (*Kosakow v. New Rochelle Radiology Associates, P.C.*)

## THE CASE FOR LENIENCY

Even absences caused by a legitimate illness can be fair game for discipline if they exceed your policy or cut too far into efficiency. Before you impose it, though, consider the following factors.

- ***The employee's previous attendance record and length of service.*** The longer the employee's been on the payroll — and performing up to par — the more your effort should focus on correction, not punishment.
- ***Any efforts the employee makes to improve.*** If you counsel employees and they respond by sharply curtailing their number of sick days, give credit where it's due — even if they haven't quite reached the goal.
- ***The nature of the absences and the extent to which they exceed the employer's norm.*** Set any limits on how a policy is used on a daily basis with an eye toward efficiency.
- ***The effect of the excessive absences on workplace efficiency and morale.*** One by-product of casual sick days — it's all but impossible for healthy employees to get the work done.

## THE CASE FOR DISCIPLINE

Absenteeism may cross the line and become misconduct — and subject to discipline or termination — when the employee:

- lacks a genuine, substantial reason for missing work;
- fails to notify you of the absence and doesn't have a compelling reason for not notifying you;
- is absent repeatedly, without reason or proper notification, and has been warned before about such conduct.

When you need to discipline an employee for excessive absenteeism, follow these progressive discipline steps.

1. **Meet privately** with the employee to discuss the attendance record and reiterate the company attendance policy.
2. **Express your concern** about how the employee's attendance affects his/her work performance, and its cost to the company in terms of missed deadlines, declining productivity, and the overtime you must pay other workers to cover for his/her unscheduled absences.
3. **Listen to the employee's side** of the story and decide if he/she has legitimate reasons for being absent. Focus on the employee's spotty attendance and how it affects job performance.
4. **Issue a memo to the employee**, outlining the problem, the person's explanation, whether the employee agreed to correct the problem and by when. Place a copy in his personnel file.
5. **Schedule a second meeting** if the employee does not meet the expectations outlined in the first memo. At this meeting, document the continuing problem and set more goals.
6. **Take disciplinary action** if progress is not made.
7. **Follow company policy** by moving from probation to suspension to termination.

## **BEWARE OF GIVING “LAST CHANCES”**

Many companies encourage their managers to work out “last-chance” agreements with problem employees as the final step in the process. But there may be problems.

For example, an employee missed several days of work due to a back injury. Upon his return, he gave his employer a doctor’s note stating that he had a serious health condition and that the absence should be counted under the FMLA. However, he was given a “last chance” under the employer’s attendance policy: One more absence, and he’d be fired. Sure enough, the next time he was absent, he was fired.

The employee claimed in court that he shouldn’t have been put on a “last chance” program because FMLA leave doesn’t count as an absence under the attendance policy. The company argued that the doctor’s note wasn’t clear about whether or not the employee had a serious health condition; thus, he wasn’t entitled to FMLA protection.

Too little, too late, a court said. Any doubts about the doctor’s note should have been challenged within two days of receipt. The company could have either requested additional information, or sent the employee to get a second opinion. (*Sims v. Alameda-Contra Costa Transit Dist.*)

Courts and arbitrators agree that chronic or excessive absenteeism justifies discharge. However, defining “chronic” or “excessive” may be difficult for individual managers, since different rules apply to different situations. Here are some factors the courts take into consideration.

1. The length of the absences and the length of time during which the employee had a poor attendance record.
2. The reasons for the employee’s absences.

3. The nature of the employee’s job.
4. The attendance records of the employee’s peers.
5. The company’s disciplinary policy relating to absenteeism.
6. Whether the company warned the employee with spotty performance that disciplinary action could result if the employee’s attendance record failed to improve.

## **MANAGERS’ ALERT: YOUR COMPLETE ABSENTEEISM AUDIT**

Here’s how to make sure every attendance problem you treat is solved. Keep the following list of questions handy — to keep you on the right management track.

- Do you have a clear understanding of your attendance policies?
- Do your employees understand how they are to report absences?
- Do you enforce your policies consistently?
- Do you counsel employees with excessive absenteeism and try to pinpoint the problems causing it?
- Do you require a doctor’s statement for sick leave?
- Do you talk to employees after each absence, giving them a chance to explain the reason?
- Do you put all comments in writing, regardless of whether disciplinary action is taken or not?

- Do you warn employees that continued absenteeism can lead to job loss?
- Do you distinguish between excused and unexcused absences in your records?
- Do you follow state and federal law concerning absences for jury duty?
- Do you consider all provisions of the Family and Medical Leave Act before charging an employee with absenteeism?
- Do you consider religious accommodation requirements before charging employees with unexcused absences?
- Do you consider the provisions of the Americans with Disabilities Act concerning absences for drug, alcohol or medical treatments?
- Do you require employees with poor attendance to report absences directly to you?
- Do you encourage employees to come in late rather than not to come in at all?
- Do you explain to employees that unexcused absenteeism has a negative effect on their performance appraisals, affecting raises, promotions and continued employment?
- Do you review attendance records regularly to pinpoint trends?
- Do you confront employees early when a pattern of absenteeism first develops?
- Do you offer employees help in areas such as car pooling or child care recommendations?
- Do you spell out the penalties completely and ask the employee if he/she understands them?
- In counseling sessions designed to combat the problem, do you ask the employee:
  - How can we stop this absenteeism?
  - Do you have any solutions?
  - Are you aware of what will happen if your attendance doesn't improve?
  - Do you set improvement goals and dates for when you expect to see improvement in attendance?

## **HOW WOULD YOU HANDLE THESE ATTENDANCE PROBLEMS?**

*Read through the four scenarios, then compare what you would have done with the analysis of right/wrong management moves which follows.*

### **SCENARIO 1: “OUT SICK” OFTEN**

“Karen, it’s Jack.”

These were not words Karen especially wanted to hear first thing Monday morning. It could only mean one thing — Jack was once again calling in sick.

“It’s my back...,” the employee moaned loudly. “Sorry, but the pain...”

“I get the picture, Jack,” Krupp interrupted him. His next sentence, she knew, would be an explanation of why he couldn’t possibly drag himself out of bed that day to come to work. He didn’t disappoint her.

Jack’s illnesses had a habit of conveniently appearing on either a Monday or a Friday. Lately, his absences followed this pattern like clockwork. He had the highest rate of absenteeism in her department.

Fed up, Karen decided to get tough. She looked over the absenteeism policy and alerted



HR to the problem. The HR director confirmed that Jack's absenteeism record was way out of line.

When Jack returned, Karen confronted him. She explained that the number of days he had missed were excessive, and that his absences followed a suspicious pattern, one which suggested he was using his sick leave to lengthen his weekends.

The next time he was sick, he was to bring a doctor's note to verify it. Karen stressed that this was not meant to punish Jack for past behavior, but to limit his future absences, and nothing more.

"Once I feel you've got the problem under control, I'll eliminate the doctor's note. And you can go back to the old system, as long as there are no further signs of abuse. Do we have a deal?" Karen asked, extending her hand.

### **Right or Wrong Move?**

Right. She proposed a reasonable solution to suspected abuse by asking the employee to supply medical verification. And she's not hung up on ancient history; she's focused on Jack's future behavior only.

By trying to strike a deal with the employee, she correctly showed there are two sides to solving any discipline problem — where the company's attempt to stem the abuse meets Jack's sorely needed change in behavior. If each party upholds its side of the bargain, the end result should be Jack's improved attendance.

### **SCENARIO 2: OVERTIME ORDEAL**

"Did you just tell me I have to work overtime? On *tonight* of all nights?" Pete said in disbelief.

Bill was instantly annoyed by the tone, even though he understood why Pete was upset. "Look, Pete, it can't be helped. The pressure's on to get this job out."

Pete shook his head emphatically. "I can't do it, Bill. I got that banquet tonight. And I gave you plenty of notice. I told you about it last week!"

Pete was engaged in a bitter custody battle for his 12-year-old son. His lawyer had instructed him to participate in as many of his son's activities as possible. Tonight, his son was being honored at a football banquet. He not only wanted to be there, his attendance was required — if the father didn't go, the son couldn't, either.

Bill decided to push the issue. "Bottom line...are you telling me you're not going to stay?" Pete stood firm. "I'm afraid my son takes priority tonight."

As the employee turned to go, Bill said: "If you leave, you're fired." Pete heard, but kept on walking.

### **Right or Wrong Move?**

Was it a mistake for Bill to push so hard?

Yes, but only because he let ego make his management decisions. This scenario didn't have to end in discharge.

Bill would have been better off finding another employee to fill in, or brokering a quick compromise along the lines of: "If I let you off tonight, can I count on you to work overtime tomorrow?"

A manager may have the right to ask any employee to work an overtime shift, but if you insist on taking such a hard line, you simply set the stage for more skirmishes with the employee.

A poor relationship erodes loyalty and works at cross purposes with your goal — if you're too inflexible, even in the face of employee hardship, the odds aren't good they will be willing to drag themselves out of bed the next morning when they just "don't feel like it."



### SCENARIO 3: PROMOTION DENIED

When a notice went up listing eligible candidates to fill a new supervisor's position, many employees were startled to see that their names weren't on it.

They soon found out why — the manager making the list had included only those employees who stuck to company policies exactly. And the group of "ineligibles" had all exceeded the generous number of 12 sick days under the absence policy.

Amidst shouts of "you're being unfair!" the decision-making manager explained that, while she had certainly considered other factors, too, in the end, she needed better attendance than that from a supervisor.

#### Right or Wrong Move?

Was the manager being unfair?

No. The manager simply used performance under the attendance policy to give herself a place to start. She based her cutoff point on the number of days designated by the company to determine "good" attendance, not on some arbitrary number of her own.

Being reliable and consistently showing up is crucial to doing a good job as a supervisor; therefore, it's an important consideration in deciding who should be promoted. Had she moved workers with such poor records up the ladder, the manager would have risked the whole process taking a cynical turn and ending up a "farce."

**Note:** She could have avoided the mini-revolt by broadcasting the promotion criteria, including the absenteeism factor, in the original notice.

### SCENARIO 4: MISTAKEN IDENTITY

When a manager took over a troubled department, its chief claim to fame was that it had the worst reputation for punctuality in the company — and productivity wasn't much

better. Although they were required to start work at 8:30 a.m., most of the staff didn't show up until almost 9:15.

The new manager cracked down by scrapping the honor system and requiring employees to sign in each morning. If they were late, they had to meet with him and explain why, then tell him how they would avoid the error in the future. Six months later, the punctuality problem was solved — but productivity remained low.

#### Right or Wrong Move?

What did this manager miss?

He tried the right approach, but solved the wrong problem. Under this manager's system, employees made it to work on time, but they didn't necessarily get down to business. However, part one of his plan worked just fine. Employees who are constantly late may need structure to become self-disciplined; the manager provided some by setting up new rules and enforcing them.

Now he needs to shift his focus to part two — imposing a system that will answer the question: "Is the department getting its work out on time and without error?"

### DEALING WITH ABSENTEEISM: TIPS FOR WIELDING THE STICK

*Anytime you decide to fix an attendance or lateness problem, you can reach for a disciplinary weapon or a motivational one to get the job done. Here are some tried-and-true ways to use both methods. See if you can add any tips to the ones suggested.*

- ◆ **DO** stress within your department that being at work and being on time go hand in hand with being a good employee. But never push the issue beyond the limits set by your company.

Employees should try to live up to what the *company* has deemed an acceptable level of absences, not match the personal standards of individual managers, which may vary greatly.

- ◆ **DO** try to figure out what is an acceptable level of absences, if your organization does not specify a maximum number. Think about how many days an employee could miss without significantly sacrificing work quality. The financial bottom line is to get the work done well, and on time. The legal bottom line is to be consistent with any attendance standards you — and other managers — impose on others.
- ◆ **DON'T** ever penalize employees who have a *legal* reason to be late or absent, e.g., they're going to physical therapy or alcohol abuse treatment, or have permission to leave early for a doctor's appointment. The same goes for employees who have a *legitimate* reason to be late or absent, e.g., for using company benefits they have earned, like personal days.
- ◆ **DO** recognize the difference between the employee who was out one day all year — even if you suspect it wasn't for a good reason — and the employee who has a chronic problem. Adjust your discipline accordingly.
- ◆ **DO** begin documenting absences as soon as you notice a trend. Record dates, hours absent, and the reason the employee gives for them.
- ◆ **DO** have a heart. Try to find a suitable replacement for an overtime assignment, if an employee's planning a once-in-a-blue-moon event. Don't stick to your guns only because you don't want to be seen as backing down.
- ◆ **DO** make sure you understand what's off-limits and who gets the last word on

any gray areas that may be in dispute in any policy that affects attendance.

*Example:* If your company requires employees to give an explanation of how they intend to use personal days, find out what's allowed and what's not.

- ◆ **DO** judge individual leave requests on their own merits, case by case. If you harbor suspicions that an employee's emergency is really just a day at the beach, ask for proof, like a copy of a car repair bill.
- ◆ **DO** keep an updated list of whom to contact in an emergency, in the event the employee must be rushed to the hospital, or is unable to fulfill their responsibilities, like picking up a child at a day care center.

## **DEALING WITH ABSENTEEISM: TIPS FOR DANGLING THE CARROT**

- ◆ **DO** reinforce good on-time and at-work habits early in an employee's tenure. Behavior gets set in stone within the first 90 days on the job, so make sure it's the positive kind. After that initial period, if the employee's already used to drifting in 10 minutes late or regularly stretching his/her lunch hour to an hour and a half, you may never get him/her to stop.
- ◆ **DO** factor attendance into performance appraisals — and make sure every employee knows it's one way to earn points toward a promotion or raise. Then practice what you preach. Downgrade an employee who misses too many days or fails to show up on time, all the time. Reward employees who come to work on the dot and never miss a day.
- ◆ **DO** try to be an equal opportunity criticizer. No one will feel you're being

fair if many are late, but only a select few are singled out for a sharp word or other punishment.

- ◆ **DO** link lost time to the actual problems it causes. Some employees see the occasional mental health day as a “victimless crime.” Point out the heavier (and unfair) burden being late or absent puts on co-workers, how the productivity of the whole team suffers, how a ripple effect makes everyone look bad. *Example:* “You know your friend will have to do the word processing now, since you won’t be here.”
- ◆ **DO** give the business version of a “gold star” to top “performers.” Those employees with perfect attendance should be roundly praised at company events and department meetings, and awarded plum assignments.
- ◆ **DO** tackle an absenteeism or tardiness problem right after you catch the employee doing something *right*. On the heels of a compliment, the employee’s in a mood to listen and learn how he/she can earn your praise again.
- ◆ **DO** write down the reason for lateness and add it to the written record. It makes it easier to discern a pattern — repeated car trouble or unreliable child care — and gives you a place to start your plan of attack. It also makes it harder to abuse the system, for example, by eliminating future absences for the death of the same relative.
- ◆ **DO** talk “cents” during the employee’s performance appraisal. Since attendance, unlike many appraisal factors, can be assigned a direct dollar value, be sure to go over the exact cost of absenteeism as it *specifically relates to that person’s job*. Talk about how much it costs to lose the work the employee would have done that day, to shift work, to miss a deadline or lose someone’s business, or to substitute workers or pay others overtime. Explain that if these costs are too high, raises will be smaller.