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Fired Up

The key to firing a problem employee is proper documentation.

You've really had it up to HERE with "Sally." She's short with customers. She's careless and makes mistakes. When you bring those mistakes to her attention, she's argumentative. It's time she hit the road. Problem is, she's not making any moves toward the door. It's up to you to hold it open, but not so wide that her attorney can come back through it. How?

Bottom line: Don't fire Sally for any reason you cannot document and start the documentation process before you fire her. Before you complain that you don't have time for a bunch of paperwork, I can tell you that "documentation" can be as simple as sticking a piece of scratch-paper in your desk with the words, "Reminded Sally about phones again. Four rings is too many," and the date. If you care to spend more time on the subject — which is like having a better insurance policy — you can give Sally a memo detailing your concerns and warning her to improve. Bear with me a moment and I'll tell you what you're protecting yourself against.

Since California is an "at-will" state, you can terminate Sally at any time, but not for reasons that are illegal, such as because of race, age, gender or religion. (If you don't know this song, read the bullets on the "Equal Opportunity Is the Law" poster, which I know is hanging in your workplace where employees can see it.) You can't terminate someone if you made a promise not to, for some reason, or if you have a termination procedure in your handbook and you didn't follow it. You can't terminate someone for exercising their rights, like filing a Workers' Compensation claim or testifying against you to the EDD.

If your ex-employee files a charge that the termination was illegal, you need to be able to show that the reason really was poor performance. How? Well, your heartfelt litany of all the rotten things Sally did at work won't carry much weight unless you can back it up with paper. That's why you document.

I once got in trouble with the Fair Employment and Housing Commission. The FEHC handles California discrimination



The
Personnel
Office
Lynne Spreen

claims and does the investigative legwork for "Big Daddy," the Equal Employment Opportunity Commission, which is the federal arm. A guy I had fired was claiming it was because of his race. I really fired him because he drank on the job, used the phone for personal calls — oh, and he never did any work. The investigator said, "You know, Lynne, I believe you, but all you have are these details in your head." Fortunately, the FEHC dismissed it, but I learned my lesson: even if you're telling the truth and did everything right, you have to be able to prove it.

Let's talk about documentation. You've already told Sally twice that she needs to "have a better attitude," yet she's still kind of snarly. Time to get serious. Follow these steps:

1. *Talk with Sally in private* (although you might have another manager with you, or keep your door open, or be where people can see you). Start with a light compliment about her or the general operation.

2. *Launch into the bad news:* "You know, Sally, I need to tell you about a concern I have." Describe the inappropriate behavior you noticed. Be objective, like a reporter in the old days: "Yesterday afternoon, remember when that little old woman came in here and she was all confused?" Sally nods warily. "When she asked you where the Senior Center was, you huffed out a breath and said, 'I have absolutely no idea.' Then you looked

down at your work until she went away. The impression I got was that you were annoyed."

At this point, Sally will begin a vigorous explanation of her innocence. You listen, concern and sympathy on your face.

3. When she pauses for breath, you ignore everything she just said and *tell her what her directions* are: "I understand, but we need to be kind and respectful to all our visitors. In the future, you need to say, 'I don't know, Ma'am, but let's see if someone else does.'" Sally repeats her defense.

4. *You repeat Step No. 3.* It's surprising how easy it is, once you do it a few times.

5. When Sally winds down, you *slide a memo across the table toward her*, saying, "Since I want to be sure you don't forget, here it is in writing. Do you have any questions? Okay, thank you." Of course, you put a copy of it in your "Sally" file, for future reference if she doesn't improve.

When you've got a few things in her file and she's still doing a bad job, you have the final conference. You should be armed with two things: her last paycheck and the "Change in Relationship" form. Don't say much. Why spend time debating your judgment?

"Sally, I'm sorry to have to tell you that I'm letting you go as of now, based on your performance. Here's your last paycheck. I'm sorry it didn't work out." She wails, curses and moans, or at least demands answers. You may choose to listen, but DO NOT discuss it further, beyond repeating, "I'm sorry it didn't work out." Then walk her to the door. You've got work to do.

Lynne Spreen is a human resources administrator at Jurupa Unified School District. Spreen also provides human resources guidance to small businesses through her consulting business, The Personnel Office. Spreen may be reached via e-mail at lspreen@hotmail.com.