



Question #1

I have a situation with a client that I would like to run by you.

- Employee is going through a tough time with his partner. Apparently, there is some abuse/infidelity.
- Employee has missed a lot of work and he has had the time through his 4 personal days and 6 sick days. Please note that he is almost out of personal and sick days and maybe 1 vacation day accrued so far.
- Employee says he is just too depressed/stressed to come into work.
- The tricky part is they have 3 HUGE projects due this month and he is the person responsible for these projects and the deadlines. They need him there to work.
- He asked if he could work from home but his supervisor told him he had to come into the office to work. They don't really telecommute within their company.
- Employee is not seeking any medical help or therapy.

What can they do? Do they just address it as an attendance issue? The company is in a real pickle because the employee has the time but has these major deadlines to meet. I don't believe this situation falls under ADA. He does not qualify for FMLA because he has not been there 1 year.

Thoughts?

Answer

Below is an email communication that was sent by one of our HR Professionals to address the question:

This email is in response to your below email wherein you asked how to address attendance issues with an employee who has expressed that he is stressed and depressed. As you mentioned, you should address the attendance issues with formal disciplinary action. During the disciplinary action meeting ask the employee if there is any

reason he/she cannot meet your attendance expectations and document the employee's response. If the employee mentions a medical condition, you should engage in the interactive process to determine if the employee needs an accommodation or provide FMLA notices, if the employee is eligible for this leave.

As you know, the Americans with Disabilities Act (ADA) require employers to provide reasonable accommodations only to employees with known disabilities. Unless an employee has an obvious disability (e.g., uses a wheelchair), an employer is not generally deemed to "know" of an employee's disability until the employee informs the employer of a medical condition that may be a disability and/or requests an accommodation. In this case, a reasonable accommodation could be a reduced schedule or leave of absence to seek medical care.

To initiate the interactive process, give the employee the attached Physicians/Health Care Provider form, Authorization to Release Medical Certification form, GINA Notice, along with his job description to be completed/reviewed by his physician. Indicate a date that certification must be returned.

If the employee does not provide medical certification, you can continue with your progressive disciplinary process. Document all conversations with the employee regarding their absences and illness as this could be important if the employee does not improve and termination is considered.

If you have any further questions or concerns, please feel free to contact me directly.

Question #2

We currently have a digital process for on-boarding new hires through an outside vendor. However, we still have our tenured employees with employee files (paper) in our restaurants. We are planning to scan existing employees' files and upload them into the vendor's system. If we cannot find an employee's file, are we required to have the employee complete a new I-9?

Answer

Below is an email communication that was sent by one of our HR Professionals to address the question:

Yes. If you have a missing I-9, the USCIS requires that you and your employee complete a new I-9 in order to be in compliance. We would recommend that you attach a note documenting the discovery of the error, applicable dates, and your current request of the employee to redo. Remember that you do not need an I-9 for employees hired prior to 11/6/1986.

Here is the applicable FAQ on the USCIS website.

- [I am missing Forms I-9 for several employees: What can I do to correct this?](#)

According to these FAQs, if an employer discovers a missing Form I-9, the employer and employee must complete a new Form I-9. The newly completed form should not be back-dated. If the employee cannot produce acceptable documentation or refuses to complete Section 1 of the Form I-9, he or she cannot work for pay. For more information on correcting Forms I-9 visit [I-9-Central](#).

If you have any further questions or concerns, please feel free to contact me directly.