

**PROBLEMATIC EMPLOYEES:**  
**Dealing with Absenteeism, Stress Claims, Medical**  
**Problems and Poor Performance**

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## **CASE STUDIES #1   SERIOUS ILLNESS/DISABILITY INTERMITTANT LEAVE**

### **EXAMPLE A:**

Helen is an excellent first-grade teacher who is in her mid-50s. She has worked for the District for many years and rarely misses work. In late August, she comes to you to report that she has been diagnosed with breast cancer. “I’m postponing surgery for a few weeks so I can get my class started. Then the doctor says I’ll be out for about two to three weeks. After that, I will have chemotherapy every three weeks for a six-month period. I’m going to schedule those appointments on Fridays so I will have the weekend to recover. I have an idea of a substitute who could replace me in September and then be available every time I have chemo – that way the kids wouldn’t have to have more than one other teacher and we would coordinate everything.”

As Helen’s supervisor, what do you need to do?

### **EXAMPLE B:**

Susan works as the administrative assistant to the Director of Curriculum and School Improvement. In your small district, she is responsible for communication with the State Department of Education and submission of student test score/identification information. She is the only person performing these tasks, which are highly complex and time-sensitive.

Susan has lupus, which has resulted in her absence from work from time to time, for periods of one to 20 days or more. These “flare-ups” are unpredictable. Susan suspects that they may be related to on-the-job stress, as they rarely occur during the summer, when her work is on a more relaxed schedule. Susan’s family, long-time and well-known residents of your community, are very worried about her illness because Susan’s sister died of lupus.

You have had discussions with Susan about whether she needs a job with less responsibility or time-pressure, but she really likes what she does. However, this year her absences have been more frequent and of longer duration, and the impact on the department has been great. Susan has used up most of her sick leave, and she is now asking to work part-days to lessen the drain on her sick leave days. There is no way to hire a substitute for Susan. You have asked her physician to provide a prognosis, but all he would say is that “Susan will continue to need to be off-work, from time to time, due to the effects of lupus, for up to three weeks at the time of any episodes. I can’t predict how frequent or when these episodes will be. We are continuing to try new drug therapy to see if we can achieve greater control of her disease.”

**As Susan’s supervisor or director of human resources, what do you need to do?**

## **CASE STUDY #2 THE EMPLOYEE WHO IS “STRESSED OUT” WHEN PERFORMANCE PROBLEMS ARE ADDRESSED**

Harvey was hired as a high school resource room special education teacher 18 months ago, with a background in law enforcement and special education in California. During his first year, his February evaluation noted some areas for improvement in paperwork and conducting IEP meetings. At the start of the second year, a new assistant principal with a background in special education was assigned to supervise Harvey. She quickly identified major problems with legal compliance in his caseload.

Harvey had worked only 11 days during the second year before he began to miss lots of work. Initially he went to a general practitioner, who verified a need for Harvey to be off work for two weeks due to “stress related to work, exacerbating previous high blood pressure problem.” After that period of leave (which exhausted all his sick leave), Harvey was back to work occasionally, but absent anytime an observation or meeting with his supervisor was scheduled, and anytime a difficult IEP meeting had been scheduled. By November, his case management duties for new referrals and difficult cases had been reassigned to other teachers so that the District would be in compliance by Dec. 1.

Harvey’s formal observation (as required by the contract at least once during probationary years) was just conducted in the classroom, in early November, and no major problems noted. However, he has also been observed informally during an IEP meeting, and a conference held about his unsatisfactory preparation and human relations skills, and there has been extensive documentation of his failure to meet legal requirements in his case management.

Harvey has made several reports to the Superintendent regarding a student who he believes should not have been expelled. The District did not conduct the manifestation hearing correctly, he has written.

**Board action on renewal/ nonrenewal of probationary teachers is scheduled for Mar. 10. What does the District need to do from the current date (early November)?**

### **CASE STUDY #3 THE CHRONIC ON-THE-JOB INJURY CASE**

Frank is one of only five mechanics in the transportation department for your small school district. He has filed a series of workers compensation claims over the 10 years he has worked for the district. When you arrived as superintendent, he was off-work on one of those claims. He had rejected even light duty work on the receptionist's desk, presenting a doctor's note that because of his back problems he would have to lie down at least 15 minutes of every hour. You had a discussion with Frank after receiving a complaint from a patron: Frank was making fire runs as a member of the local volunteer fire department, and appeared to be functioning well on those occasions. Shortly after your meeting with Frank, he was back on the job.

However, his doctor had written a release indicating that Frank could not lift more than 20 pounds. Frank was directed to ask one of the other mechanics to help him whenever he had to lift a bus tire weighing much more than that into place. After that, his supervisor would find him in the break room during the swing shift at times other than his assigned break. He explains that he is waiting for another mechanic to finish up a job so that mechanic can help him lift some tires.

The district has bought a mechanical device to lift tires so that Frank can do his job even with his limitation. However, last Thursday Frank reported he injured his back. In the investigation of the incident, another mechanic reported seeing Frank lifting a 50-pound box of bolts off the shelf earlier that evening.

Frank has exhausted all sick leave and has used 55 days of leave during the past 12-month period. He has presented a doctor's note saying that he will be off work for the next 10 days because his back pain is worse and he can't push or pull or squat, and can only lift 10 pounds.

**As Frank's supervisor, what do you need to do?**

## WORKSHEET

### 1. HAS THE EMPLOYEE CLAIMED ON-THE-JOB INJURY OR ILLNESS?

If so:

- \_\_\_\_\_ Provide the employee with Workers Comp reporting form.
- \_\_\_\_\_ If the employee makes a WC claim, communicate with WC carrier to obtain medical information (IME)
- \_\_\_\_\_ Consider any light duty position available, for limited period, but no obligation to provide light duty
- \_\_\_\_\_ Reinstate to position held if employee becomes able to perform the job again within 3 years of illness/injury

### 2. IS THE EMPLOYEE CLAIMING A DISABILITY REQUIRING ABSENCE FROM WORK AND/OR MODIFICATION OF JOB REQUIREMENTS?

If so:

- \_\_\_\_\_ Request treating physician response to specific questions about ability to perform specific requirements of the job
- \_\_\_\_\_ Consider requesting IME if physician report is lacking in specificity
- \_\_\_\_\_ Determine whether employee is ADA-protected (having a mental or physical condition that is a significant impairment of a major life function).
- \_\_\_\_\_ If ADA-protected, or if doubts about ADA status exist, hold "interactive meeting" to hear employee's suggestions for accommodations
- \_\_\_\_\_ Determine if accommodations can be provided to allow the employee to perform the essential functions of the job, without undue hardship on the employer or substantially changing the nature of the job.
- \_\_\_\_\_ If reasonable accommodations exist, make an offer to implement
- \_\_\_\_\_ Set periodic review meetings and updates on medical condition to determine if accommodations continue to be needed and reasonable.

### 3. IS THE EMPLOYEE ABSENT FROM WORK ON A CONTINUOUS OR SPORADIC BASIS DUE TO HIS/HER OWN ILLNESS OR INJURY?

If so:

- \_\_\_\_\_ Notify the employee that leave days are being counted for FMLA/OFLA purposes
- \_\_\_\_\_ Require doctor's verification of "serious medical condition" and any need for intermittent leave.
- \_\_\_\_\_ Any leave not covered by FMLA/OFLA (i.e., one day absences for flu, colds, etc.) may be documented as part of pattern of unsatisfactory attendance; use corrective discipline or POA.
- \_\_\_\_\_ Maintain employee's insurance with same District payment as before for 60 days of FMLA/OFLA leave (three months).
- \_\_\_\_\_ Determine if employee has accumulated paid sick leave left.
- \_\_\_\_\_ After expiration of any paid accumulated sick leave, employee is placed on unpaid leave until expiration of FMLA/OFLA
- \_\_\_\_\_ Upon expiration of FMLA/OFLA leave and any leave time guaranteed

by CBA and/or policy, classified employee may be dismissed.

\_\_\_\_\_ Licensed teacher or administrator must be placed on unpaid leave immediately, until the following August 1.

\_\_\_\_\_ Dismissal possible once all leave entitlements are exhausted if employee cannot return to work and maintain regular attendance (but check for ADA status/accommodation)

4. IS THE EMPLOYEE ABSENT DUE TO ILLNESS/INJURY OF MEMBER OF FAMILY?

\_\_\_\_\_ Ask the employee to identify the family member (limited to children, spouse, parents, parents-in-law unless CBA adds other relatives).

\_\_\_\_\_ Ask for verification of serious medical condition from doctor

\_\_\_\_\_ Ask for verification of the need for employee to provide such care

\_\_\_\_\_ If qualified, notify employee of availability of unpaid leave under FMLA/OFLA for 60 days

\_\_\_\_\_ If provided by CBA or policy, notify employee of availability of any paid leave or ability to use paid sick leave.

\_\_\_\_\_ Allow leave in excess of 60 days if allowed by CBA or policy.