

DEMOTIONS: USE THEM OR LOSE THEM

**When does it make sense to retain a
“problem” employee rather than
terminate?**

Presented by: Brian J. Begle
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ELEMENTARY

Determine the source of the problem.

- Policy Violation
 - Discipline
- Performance
 - Ability or
 - Attitude



IF ABILITY IS AT ISSUE

- Proper notice.
- Corrective measures.
- Opportunity to succeed.
- Beware of ADA issues.
- Ensure unbiased eval.
- Clear failure to correct.
- Usually termination.
- Demotion is an option.



ANALYZE THE SITUATION

- Ability v. Attitude.
- Especially supervisors.
- Salvaged at lower rank?
- Retain good employee.
- Retain institutional knowledge/training.
- Avoid many problems with a termination.



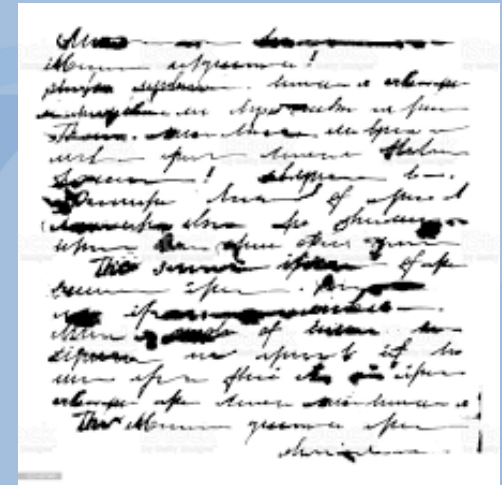
DEMOTION IS NOT RISK FREE



- **Still considered an adverse employment action.**
- **Must jump through all hoops of a termination procedure.**
- **Still subject to EEOC charges/lawsuits.**

PROCESS

- Be careful to document the situation to cover a future challenge.
- Ensure that the employee is treated fairly compared to others in the same or similar situation.
- Anticipate potential attacks and work to minimize the risk.
- Understand that you are dealing with a person's sense of self-worth.



REMEMBER: NO GOOD DEED GOES UNPUNISHED

- Be sure that this is an employee you want to keep.
- Be aware of any statutory pitfalls, (Chapter 143 Employers).
- Try to get buy-in from the employee.
- Follow up to assure competence and acceptance.



DOCUMENT THE ACTION

Preparation

- Clearly explained allegations are less likely to lead to a discrimination complaint or a lawsuit.
- A well-supported demotion letter can help to avoid a negative finding in an EEOC investigation and will dissuade an attorney from taking the case.
- A fair investigation/explanation provides a solid defense to discrimination claims.



ADVERSARIAL V. FRIENDLY DEMOTION

- Parties reach an amicable agreement.
- Avoids stain on the employee's record.
- Places the employee in position to succeed.
- Avoid potential litigation and negative public attention on the action.



QUESTIONS

