

## Automation Alley Newsletter

September 2010

---

### What To Do When Employees Melt Down

---

Employees in the workplace acting out as a result of issues in their job or personal life is not a new phenomenon. But the stress of a slowly recovering economy and still high levels of unemployment have somehow made a celebrity of a flight attendant at JetBlue Airways who acted out in a rather unusual manner.

The numerous conflicting stories surrounding the flight attendant, his provocation or lack thereof, make it impossible to comment with any certainty as to the actual facts surrounding the flight attendant's actions. Instead of analyzing what happened in that instance, I will try here to provide some guidance for employers who find themselves facing such situations.

The first tip is to not act precipitously. Contain the situation by getting the employee out of the workplace until the matter can be investigated. Determine if there is a potential threat of violence and take precautions. Once these steps have been taken, the company needs to determine the appropriate response to the employee's actions. Terminating the employee is not always the right response, nor will the employee's actions normally result in the notoriety or publicity surrounding the JetBlue employee.

The first action to take after you get the employee out of the workplace is to determine what took place. Identify and interview any witnesses and secure any physical evidence of the event. If the company is a service company, it needs to reach out to any affected customers and treat their concerns. The message to the public, if one is needed, must contain the facts of the incident and the steps being taken to correct it. Further, it is important to highlight the fact that these events are an aberration and do not fairly reflect the level of service the company provides.

There is difficulty in saying what actions the company is going to take to prevent such events from happening in the future because it is not always easy to determine what caused them in the first place. An employee's motivation or trigger for acting out can be anything from the stress of personal issues such as divorce, bankruptcy or the death of a loved one to mental illness. Isolating the cause is the first issue. To do this, you should first interview the employee to see if he or she can explain the reason for their actions.

In one incident, I dealt with a normally docile employee who suddenly struck an employee he did not know, took a vehicle without authorization and was driving the wrong way on an interstate

highway until he was run off the highway by a truck coming in the other direction. Clearly, this was not his normal behavior, but after the employee interview, it was determined he had stopped taking his prescribed medication because of their side effects.

Resuming his medication and other safety precautions prevented these actions from occurring again. Causation, however, is not always that easy to find, but if it is determined that the incident may be the result of a psychiatric disability, then the employer must perform a realistic assessment of the nature of the illness, seeking professional help if necessary.

The employer needs to acknowledge that it may be dealing with an individual who is impaired and may not act or react rationally or logically. You need to find out if the behavior can be controlled chemically or with counseling. You also need to determine if the individual is taking his/her medication or getting the counseling needed. Try to assess if there is a substance abuse problem. Finally, do not take lightly the potential for violence.

The Americans with Disabilities Act requires that employers use such an interactive process in determining if there is any accommodation possible for the individual. This would include the following steps:

1. An employer may lawfully exclude an individual with a psychiatric disability from employment for safety reasons only if the employer can show that employment of an individual would pose a direct threat.
2. "Direct threat" means "a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.
3. Direct threat analysis must be conducted on an individual basis and must consist of "a reasonable medical judgment relying on the most current medical knowledge and/or the best available objective evidence." Thus, an employer's subjective assessment is not sufficient to support a decision to fire for safety reasons.
4. An individual is not a direct threat simply because he/she has a history of psychiatric disability.
5. An individual is also not a direct threat solely because he/she takes medication that diminishes coordination or concentration or because he/she has attempted to commit suicide in the past.
6. An employer may be able to prove a direct threat where violent behavior occurred in the recent past and the employee had received no treatment for the behavior in the interim. If the condition cannot be controlled, then termination of the employee is permissible.

There are, however, triggers other than psychological problems causing employees to act out. These triggers are often the frustration with stress of the workplace, a loss of control may be a reaction to the hostile or abusive behavior of a customer, or personal issues.

Personal issues can be dealt with in an Employee Assistance Program and I am not going to address them here because they are normally beyond the ability of the employer to address. Many employers, however, that have issues with abusive customers have started programs that teach employees to deflect hostile and abusive behavior.

Clearly, the major purpose of hostile and abrasive behavior is to control or manipulate the environment. This is true whether the behavior is directed by a customer to an employee or by one employee to another. If your employees are dealing with hostile customers, the customer's purpose is usually to control the employee, to influence the employee's reactions in the almost naïve hope that the employee will do whatever the customer wants.

Understanding this helps the employer and employee discover some critical principles in defusing hostilities. Whether you are a supervisor dealing with an employee or an employee dealing with a hostile customer, you must avoid being controlled, and that means you must avoid responding to nasty attacks in ways the attackers want. If you refuse to be controlled and you refuse to react the way the attacker wishes, this will be a good way to stop the attack. Such techniques need to be taught to employees dealing with hostile customers.

What sets apart hostile/abusive behavior from angry behavior is that hostile/abusive behavior is intended consciously or unconsciously to get a reaction. It is this kind of behavior that causes the greatest amount of stress for employees and results in the acting out by the employee. Employees need to be trained to not lose control when customers launch into the hostile/abusive behavior, when they tend to rant, use intimidation tactics or simply won't go away.

When stress is the result of the workplace itself, employers need to react to those pressures by training their supervisors how to relieve the stress and increase morale. This article does not have enough space for a full discussion of how to correct or remedy those issues. But some simple tenets are that high stress workplaces have traditionally had the following characteristics:

- a) Management does not communicate with or delegates control to employees.
- b) Employee work is fast-paced and performed in poor environmental conditions.
- c) Overtime is frequent.
- d) Personal conflicts are common.
- e) Employee benefits have been reduced recently.

A low stress workplace by comparison has the following characteristics:

- a) Management and employees communicate openly.
- b) Management encourages humor in the workplace.
- c) Jobs are well-defined and employees have adequate control in how they perform them.
- d) Benefits and compensation are competitive.
- e) Employees can relax or exercise during the work day.

The recession we have been in the last two to three years has changed all that. In the new workplace:

- a) Management and employees communicate openly but mostly it's about bad news, plant closings, layoffs or rumors of the same.
- b) Management encourages humor in the workplace but there is nothing to laugh about.

- c) Overtime is non-existent and those who counted on it are in financial difficulty.
- d) Jobs are well-defined and employees have adequate control in how they perform them because most of the supervisors have already been laid off.
- e) Benefits and compensation are competitive because no one is getting a pay raise as most employers have cut wages and lowered benefits.
- f) Employees can relax or exercise during the workweek as many employers have reduced the work week to three or four days.

These factors have only increased the stress level in most work places, forcing employers to deal with more severe issues.

The above are, of course, all preventative actions to make sure such acting out incidents don't happen in the future, but what do we do with that employee who just jumped off the plane, assuming the actions were not the result of a serious psychological condition?

The employer must make a decision based on the severity of the action to counsel or discipline. If the discipline is chosen, then it must be consistent with previous discipline where there were other employees who have done similar actions. This is to avoid employment discrimination claims.

If this is a first-time occurrence, then whatever discipline is given becomes the precedent for future discipline of other employees. Therefore, if this employee is retained because of his or her importance to the company, the employer needs to realize that if you do not give the same second chance to another employee of a different gender or race, or ethnicity they may face a claim of discrimination.

Obviously, there can be other concerns such as an employment contract progressive discipline policies or the presence of a union collective bargaining agreement controlling the situation.

Ultimately, in a disciplinary situation, the employer will have to determine whether — based on the offensiveness of the action, the company rules that were violated, the damages to customer relations and the chance of having this occur again — they can afford to retain the employee.

**John P. Hancock Jr.**  
[hancock@butzel.com](mailto:hancock@butzel.com)  
313 225 7021

**Copyright 2010, Butzel Long, a professional corporation**  
Any reproduction without permission of the author is prohibited.

The above news is only intended to highlight some of the important issues. This e-mail has been prepared by Butzel Long for information only and is not legal advice. This information is not intended to create, and receipt of it does not constitute, a client-lawyer relationship. Readers should not act upon this information without seeking professional counsel. This electronic newsletter and the information it contains may be considered attorney advertising in some states. If you feel you have received this information in error, or no longer wish to receive this service, please follow the instructions at the bottom of this message.

# BUTZEL LONG

ATTORNEYS AND COUNSELORS

---

**Attorney Advertising Notice** - The contents of this e-mail may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.

For previous e-news or to learn more about our law firm and its services, please visit our website at: [www.butzel.com](http://www.butzel.com)

**Butzel Long Offices:**

Ann Arbor  
Bloomfield Hills  
Detroit  
Lansing  
New York  
Washington D.C.

**Alliance Offices:**

Beijing  
Shanghai  
Mexico City  
Monterrey

**Member:**

Lex Mundi