

## *Chapter 18*

# **Employee performance reviews**

Performance evaluations can be an effective means of preventing discrimination claims. They can keep employees regularly advised of how they actually stand with the employer and prevent surprises in the future. If the evaluations are properly documented, they can head off discrimination claims or provide a good defense to them. On the other hand, if the evaluation is merely perfunctory and does not inform the employee of how he or she is actually doing, then it can come back to haunt the employer when a discrimination claim is filed. Too often, supervisors or managers who rate employees have received no instructions concerning how to evaluate employees. Too often, those who rate employees check “satisfactory” or “good” without giving very much thought to whether these terms are correct. It is not uncommon for the person filling out a performance evaluation to use the same comments for virtually all employees. Such use of the performance review is relatively meaningless, unreliable, and leaves the employer ripe for a lawsuit.

## **Supervisor training**

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If the supervisors and managers are not specifically trained to carefully and accurately evaluate employees, the evaluation can make the defense of a discrimination case even more difficult to accomplish. On the other hand, if supervisors and managers are trained to evaluate employees, if they follow through with what they have learned in the training, and if these evaluations are well documented, they can prove to be most valuable, not only in connection with preventing or defending a lawsuit.

The objective of providing employees evaluations is to acknowledge the positive performance of employees and provide guidance for the employee to improve their performance in areas that it is deficient. To do so, the evaluation must be constructive. The errors which most often occur in evaluating employees include excessive leniency, the tendency to avoid the ends of a rating scale (like “superior” or “poor”), and the inclination on the part of some managers or supervisors to rate an employee in each area on the basis of an overall impression, rather than on the basis of how the employee has performed in each specific area. The evaluation should include objective (as opposed to subjective)

goals for the individual. For example, telling an employee that they need to improve their attitude is generally too subjective to measure. But, if an employee has a bad attitude, this typically will affect parts of his job which can be more objectively measured. It is often helpful to have an employee participate in preparing a performance improvement plan. By doing so, you increase the likelihood that the employee will “buy in” to the goals. Additionally, it is more difficult for an employee to claim that they did not understand what was required of them if they participate in drafting the plan.

Supervisors and managers who evaluate employees should be given instructions which are clearly set forth in writing. These instructions should explain the system’s importance and purpose, as well as the need for honesty, accuracy, fairness and constructive feedback. The instructions should include information which is helpful to the supervisor or manager in dealing with potential problems. These instructions should include a directive to review the job description before evaluating current employees. The supervisor or manager should sign a form acknowledging that he or she has read the instructions and will comply with them, with the form being placed in the supervisor’s personnel file. Additionally, a program for training supervisors or managers in conducting performance reviews should be implemented. Such training will generally take at least a whole day and will include a number of practice exercises to establish the typical types of errors made in performance evaluations and to increase the overall reliability of the evaluation.

## Evaluation forms

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Job-related evaluation forms should be used. A “canned form” is usually inappropriate. The rating choices on any form should be as specific as possible and related to the area of performance being evaluated. The sometimes used “unsatisfactory,” “satisfactory,” “good” and “excellent” are often too general and meaningless to properly evaluate particular jobs. In some instances, it should be remembered that a choice of “not observed” or “not applicable” should be available to the supervisor.

### Areas for evaluation

Every employer will have the need to review and monitor specific abilities on the part of employees. In general, however, the following areas may be appropriate for evaluation.

- **Job commitment** – such as the ability to assume responsibility, display a positive attitude, and work diligently and in a timely manner.
- **Judgment** – including the ability to make well-founded and educated decisions, the ability analyze job situations and problems and to evaluate alternatives for handling.

- **Initiative** – including the ability to work independently, to take on new challenges and to make sustained efforts to overcome obstacles.
- **Leadership** – such as the ability to influence or motivate co-workers, as well as the ability to help and work cooperatively with others.
- **Professionalism** – including the ability to act on the job with integrity and honesty, and to accept criticism in a positive manner and learn from mistakes.
- **Job knowledge** – such as the mastery of basic job skills, and the ability to learn new skills, may also include the ability to work accurately, precisely and thoroughly.

## Review by objective person

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Employers must take precautions against supervisor and manager bias. During the training of supervisors and managers, employers must emphasize as strongly as possible that the employer will not tolerate any job-related stereotype or bias. It is important that the employer have some type of system for monitoring performance evaluations completed by supervisors and managers to make sure that biases are not creeping into the process.

For example, personnel directors should review all performance reviews prior to presenting them to employees. In addition, the evaluation should be reviewed by a manager at least one level higher than the evaluator, before it is finalized. Having an additional level of review produces greater reliability, and is usually most effective when the reviewer has personal knowledge of the job duties under review and the actual abilities of the employee being evaluated.

## Meaningful evaluations

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The review must be honest and candid. While it is possible for a supervisor to be unduly harsh on employees during an evaluation, excessive leniency is ordinarily the rule rather than the exception. Certainly, it is appropriate to note and praise good work done by the employee in the past. But an evaluation must also point out any deficiencies in performances. Sometimes, supervisors are simply unwilling to confront an employee because it is an unpleasant experience. Supervisors may hope that the future performance will get better if good ratings are given now. Often supervisors simply don't pay enough attention to the review being done and do it in a careless manner. Supervisors may be too easy on employees because of the litigation climate currently surrounding all aspects of employment. However, excessive leniency usually results in increasing and then frustrating an employee's expectation, and can make an otherwise routine termination hazardous. If there is excessive leniency, it is unlikely that job performance will improve, since the employee may not even be aware of deficiencies. For a review process to be

productive, it must be one that alerts employees to what is expected of them, how they are deficient in performance, and how they can improve. If an employee has a specific problem, this problem should be identified. If an employee is not doing a good job, he or she should be specifically told just that. Nothing can be more damaging to an employer's position in a lawsuit than to have favorable evaluation reports in a personnel file which do not accurately reflect an employee's performance.

## **Employee acknowledgment**

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Employees should have the right to review the evaluation and the opportunity to comment on it. This part of the process can alert an employer to actual or potential problems with an employee. It also provides proof of fairness on the part of the employer.

The employee should be given an opportunity to concur or disagree with the job duties rated. If the employee concurs with the job duties he or she is supposed to be performing, this can be of assistance later on in dealing with a dispute with the employee. If the employee disagrees with the job duties, this gives the employer an opportunity to re-evaluate those job duties or impress upon the employee that he or she had the wrong impression of what the job duties are.

The employee should sign an acknowledgment on the evaluation form to the effect that he or she has read the evaluation. The employee will then be unable to claim later on that he was unaware of how he was being evaluated. The employee should be permitted to write on the evaluation form that he is in disagreement with the evaluation if this is the case.

The performance evaluation can also give an employer the opportunity to set goals for the employee to accomplish during the period of time before the next review. These goals can have the effect of attempting to eliminate problems that the employee has had in the past or can relate to additional accomplishments that the employer would like for the employee to make. It should be noted on the evaluation form that both the employer and the employee are in agreement with respect to the employee working toward these goals.

Although this is implicit in everything stated above, it is essential that all performance evaluations be carefully documented. The documentation should occur in the same way for all employees to show that the procedure is consistently applied. The evaluation may be of little use in defending a discrimination claim if it is not documented.

## **When not to evaluate**

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Although performance reviews, if used properly, can help employers, there are times when they should not be performed. All of the following are reasons to not use performance reviews:

- If the performance reviews are not consistently performed for all employees.
- If the evaluations are not documented.
- If supervisors and managers do not clearly set forth employee deficiencies.
- If required improvement on the part of the employee, set forth in the evaluation, is not followed through on.
- If the general evaluation rules specified above are not taken seriously by employers.

It should be remembered that continued salary increases (even when an employee is not performing well) may give the employee some basis for a discrimination charge later on. Employees who consistently receive salary increase have a documented history of acceptable performance. If those employees are later terminated, the employer often has a difficult time explaining why an employee with a favorable job history was chosen for termination. Without a believable explanation, the employer may be suspected of discrimination.

