

Performance Management: Making the Most of Your Human Resources

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Agenda

- Discussing Personnel Issues
- Performance Evaluation
- Dealing With Unsatisfactory Performance
- Veteran's Preference Act Discharge
- Police Officers Discipline Procedures Act
- Performance Problems Involving Drugs, Alcohol or Mental Illness



Discussing Personnel Issues



- Care must be taken not to share private personnel data
 with anyone not authorized to receive the data
- When seeking input from professional peers, discuss issues in general terms only
- Omitting the employee's name may not be enough if the other information provided can be used to identify the employee

Performance Management Starts with Hiring



- Position description
- Screening applications
- Interviews
- References

Position Description



- Defines expectations of the position for the employee and employer
- Provides baseline objective criteria for performance evaluation
- Defines essential functions of the position
- Defines minimum qualifications for a position
- Provides basis for determining categories for Veterans Preference 100-point competitive scale

Interviews



- When done by a quorum of the board, OML applies
- Standard set of questions should be asked of each applicant
- Questions and notes regarding answers should be maintained for at least 18 months

Interviews

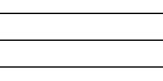


- Make sure questions do not run afoul of anti-discrimination laws
- Avoid questions that could infer discriminatory purpose
- Be careful of "casual conversations" that may bring up information related to protected classes

Protected Class Categories

- Race
- Color
- Creed
- Religion
- National origin
- Sex
- Marital status
- Familial status

- M FSRC
- Disability
- Public assistance
- Age
- Sexual orientation
- Local human rights commission activity
- Pregnancy
- Genetic information



Reference Checks



- Part of due diligence in the hiring process
- May yield additional insight on the top applicants
- Be careful of using the Internet or social media to "check out" or evaluate an applicant for employment
- Comply with legal requirements relative to background checks, etc.



Performance Evaluation

Performance Management

Performance Management



- Ongoing process
- Designed to improve the efficiency and effectiveness of the organization
- Employees significantly affect the organization
- Requires work
 - Planning
 - Managing
 - Evaluating
- Document, document, document!

Plan



- Performance management starts with the position
 description
- Should already be established per the hiring process

Manage



- The process of working toward the performance expectations established in the planning phase and listed in the position description
- Observing
 - Direct: first-hand knowledge
 - Indirect: learning by reviewing work
- Coaching
 - Provide immediate positive reinforcement
 - Handle problems, deficiencies, trouble spots as they occur

Manage



- Knowledge and skills to monitor
 - · Conceptual: ability to see the "big picture," set priorities
 - Perceptual: understanding mission, goals, structure
 - Interpersonal: ability to work with people
 - Technical: ability to use tools and concepts
 - Personal: ability to take action or responsibility

Performance Evaluation Benefits



- Opens lines of communication regarding performance
 and expectations
- Provides employee feedback
- Increases morale
- Assists in managing talent

Performance Evaluation Benefits (Continued)



- Assists in career development
- Identifies areas of needed training and improvement
- Provides documentation for making fair, objective, legal personnel decisions

Provides Opportunity for Dialogue



- Employees can:
 - Analyze their performance and look for ways to improve
 - Develop their communication skills
- Find role models
- Employers can:
 - Help employees identify strengths and areas of improvement
 - Provide resources, suggestions, opportunities

Completing the Evaluation

 Do not allow personal biases to affect your judgment; be objective
 Focus on concrete examples



- Do not use almost meaningless rating scalesDo not rely on memory
 - Track both positive and negative examples

Completing the Evaluation



 Avoid common rating errors
 Recency effect

- Do not avoid tough issues
- Recency effe
 Horns effect
- "Big surprise"

Employee Development Plan



- Appropriate for all employees
- Address employee's strengths and weaknesses
- Establish employee's performance factors and goals for the next evaluation cycle

Performance Goals



- Specific: not generalMeasurable: quantifiable
- Attainable: achievable in the context of present realities
- Realistic: capable given existing resources
- Timely: date by which the goal must be accomplished

Conducting the Evaluation



- Establish meeting location, date and time well in advance of the meeting
- Prepare the employee for the meeting
 Consider a self-evaluation
 - Consider providing a copy of your evaluation prior to the meeting
- Prepare yourself for the meeting

Conducting the Evaluation

- Avoid phrases such as:
 - You're wrong
 - What was your problem
 - You did a really great job, but...
 - Negates complimentI understand
 - Following an excuse for poor performance



Conducting the Evaluation



- Review the job description with the incumbent
 Identify the most important job functions
- Discuss performance standards
- Discuss performance goals

Conducting the Performance Evaluation



- Listen to what the employee has to say
- Focus on the employee and keep your mind open
- Try not to interrupt
- Utilize nonverbal and verbal signals to show you are listening

Performance Evaluations



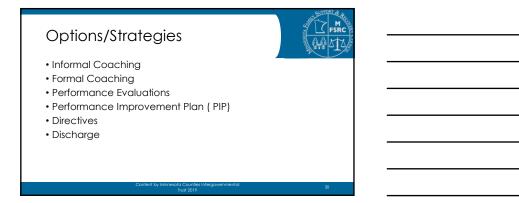
- Should be written
- Signed by the employee
- Placed in the employee's personnel file

Warning Signs of Systemic Performance Evaluation Issues



- Surprise ratings during review
- Inconsistent application of rating system
- Ratings don't reflect actual employee performance
- Productivity/Morale decreases during evaluation time





Performance Improvement Plan



- Can be initiated at any time
- Should be:
 - Written
 - Signed by the employee
 - Placed in the employee's personnel file

Performance Improvement Plan



- Performance evaluation notations have been unsuccessful
- Problem is of a nature that it cannot be addressed properly in a performance evaluation
- Problem is serious and needs immediate attention

Elements of a Performance Improvement Plan



- Identify the specific problem(s), including examples
- Explain why the employee's conduct/ performance is not acceptable
- Identify the specific areas to be improved
- Establish expectations for improvement including timeframe and date to revisit the issue

Elements of a Performance Improvement Plan



- Include directives that are clear and concise
- State the consequences for failing to improve performance
- Provide the employee an opportunity to present ideas for coaching or training
- Offer and identify assistance/resources for employee to improve performance

Elements of a Performance Improvement Plan



- State that you will assume the employee understands the PIP unless he or she seeks clarification
- Warn the employee, failure to follow through on PIP may be subject to discipline, up to and including discharge

Directives



- Directives to employee seek to change a certain behavior
 - You will arrive to work at X
 - You will follow directions given by your supervisor
 - You will not swear at work
- Typically address concrete concerns:
- Failure to abide by directives leads to discipline

Notification



- Meet with the employee to discuss the PIP/Directives
- Have the employee sign the Notice
- Send a follow-up memo to the employee memorializing any verbal clarifications
- Place all documents in the employee's personnel file

Note of Caution



• Do not issue letters or evaluations praising the employee for an improvement in performance immediately following a disciplinary incident or poor evaluation until a reasonable amount of time has passed

Note of Caution



- Referring the employee to an employee assistance program (EAP) should only be done as an option and should not be made mandatory
- Never suggest to the employee that he or she may have a physical, mental or emotional problem that is affecting his or her work

Discipline



- Consider any terms or conditions outlined in the organization's personnel policy or collective bargaining agreements
- Be wary of inconsistent application of rules

Last Chance Agreement



• Often times agreement between employer and employee (often involving union) that says if employee violates agreement will be terminated

Note of Caution



Contract language or policies that mandate progressive discipline can adversely affect the employer's disciplinary plan

• Preserve the option to discharge an employee or skip steps for egregious conduct even when it is the first violation

Note of Caution



- Do not agree to remove the discipline from the file after a specific period
- If removed, the employer will have to start over to develop the record and will have lost the ability to argue there is a continued pattern of misconduct or poor performance by the employee

Areas of Increased Risk



- Discipline/Termination immediately after
 Protected leave
 - Disclosure of a disability
 - Election/Protected first amendment conduct
 - Whistleblower Conduct
 - Worker's Comp report of injury
- Discipline/Termination may be warranted, but the file should warrant a legal review



Discharge



• Investigate and document the actions that necessitate the discharge

Areas of Risk-Investigation



- "Neutral" investigator
- Tennessen Notice/Garrity Warning
- Offering "confidentiality"
- Who may have access

Discharge



- Provide the employee with due process
 - Notice of expectations and work rules
 - Notice of performance deficiencies
 - Notice of charges for egregious conduct justifying termination
- Conduct a Loudermill Hearing

Loudermill Hearing



- Prior to being discharged, a public employee has the right to an informal pre-termination meeting to respond to the allegations against him or her
- The hearing is generally informal

Loudermill Hearing



• Some employees may have recourse to have the employer's decision to terminate reconsidered, which may include arbitration proceedings pursuant to a CBA or a hearing required by a personnel policy

Name Clearing Hearing



- Typically arises when employee says information released by government entity in support of termination raises a "liberty interest"
- Example: X said Y to the public, which has tarnished my reputation
- Employee demands name clearing hearing in front of governing board



Veteran's Preference Act

Discharge

Veterans' Rights



- Right to notice and a hearing prior to removal from a position or employment
- Can only be removed for incompetence or misconduct
- **Recent statutory change now allows for a probationary period for veterans under certain conditions

What Is a Removal?



- Discharge, demotion or "resign or be terminated"
- Disciplinary suspension will constitute a removal, if:
 - Conditions imposed for return to work make it unlikely that the veteran will be able to return
 - Is in conjunction with a proposal for termination

Notice of Charges



• Employer has an obligation to provide notice of charges

- Includes statutory grounds and factual basis for removal
 Informs veteran that he or she has 30 days to request a hearing and of other hearing rights
- If no hearing request, veteran waives right to a hearing and all other remedies for reinstatement

Compensation



- During this 30-day period, the public employer is obligated to compensate the veteran
- If the veteran requests a hearing, compensation continues until the arbitrator* panel makes its decision

Importance of Notice



- If employer fails to give notice of rights, the 30-day period is indefinitely extended
- A veteran successfully asserting a right to a hearing could be entitled to back pay from the date of discharge, even if removal is upheld

Best Practice



 Include a veterans preference notice with all discharge, layoff or demotion notices, regardless of whether you think that the person is a veteran

Right to a Hearing



- The hearing is held before a neutral decisionmaker
- Public employer has the burden at the hearing to show that it acted reasonably and that there is just cause for the discharge or demotion
- Veterans covered by a CBA must choose between grievance procedure or Vets Pref hearing

Nondisciplinary Layoff or Demotion



- Not considered removal when done by seniority and current position abolished
- Veteran can challenge if he or she believes the action is being used to avoid VPA rights
- Notice of right to challenge should be given in the layoff notice



Peace Officer Discipline Procedures Act (Minn. Stat. 626.89)

Termination

Peace Officer Discipline Procedures Act (PODPA)



• Establishes regulations when investigating allegations against a licensed peace officer and a formal statement is required of that officer.

PODPA



Notice of formal statement must include:

Interview location

• Written complaint signed by complainant

- Witness list, upon request
- Copies of witness statement or investigation report, upon request
- Length of session
- Electronic recording
- Notice of use of admissions

PODPA



- Requires CLEOs to have written procedures re: investigating complaints of misconduct
 - May result in disciplinary action
 - Investigation process
 - Imposition of sanctions
 - Appeal process
 - Notification of complainant
 - Effective date



OR MENTAL HEALTH ISSUES

Performance Management

Handling Performance Problems



- Document the performance issues, not the disability
- Never assume to know what is affecting the employee's job performance
- Treat the employee like any other employee whose work fails to comply with the job description or to meet expectations
- Bring performance issues to the attention of the employee

Handling Performance Problems



- Provide the employee the opportunity to correct his or her performance
- . Never suggest to the employee that he or she may have a physical, mental or emotional problem that is affecting his or her work

Conclusion



- Attempt to correct and improve employee performance deficiencies
- Be prepared to deal with employee misconduct or performance that does not improve

Conclusion



Have an effective performance management system

Consult with legal counsel or labor/employment specialists

