

#### Performance Management: Making the Most of Your Human Resources

St. Cloud, MN October 8, 2019 3:00 p.m.



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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

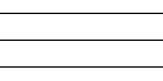


- Make sure questions do not run afoul of anti-discrimination laws
- Avoid questions that could infer discriminatory purpose
- Be careful of "casual conversations" that may bring up information related to protected classes

#### 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



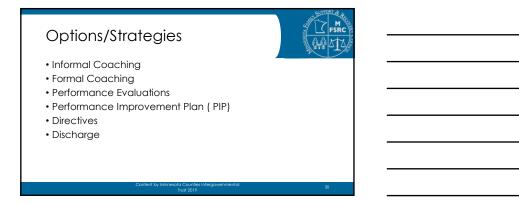
- Should be written
- Signed by the employee
- Placed in the employee's personnel file

#### 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

