

PERFORMANCE EVALUATIONS FOR SCHOOL PERSONNEL

Presenter
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Introductions

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Activity
Best Day....Worst Day

Workshop Format & Goals

- Informal
- Robust (in terms of what we'll cover)
- Interspersed with activities
- Ten minute breaks around 2:00 and 3:00 PM
- Ask questions as we go
- Q&A as time allows at the end

- Goal
- Knowledge
 - Interaction
 - Value
 - Inspiration!

Evaluating Employee Performance...Does it Really Matter?

- We live in a world of measurement
- Evaluation is part of a cycle that begins with hiring
- Can be an effective tool for improving performance
- Should be strategic in nature
- Can help defend against litigation
- Support discharge decisions

Remember...performance evaluation is not an event...but an ongoing feedback process

Role of HR is to create synergy, a framework, and resources!

What's Your Organization's Performance Evaluation Philosophy?

- Can you identify yours?
- Does it translate into your HR practices?
- Is it market/customer-driven?
- Is it connected to your organization's goals?
- Does it reflect your guiding principles?

Understanding Employment Status

- At-Will (product of the 1930's)
 - ✓ Implies no job security
 - ✓ Full of statutory exceptions (thanks to the 80's) – protected rights, contractual issues, public policy, implied covenants, etc.
- Performance Contract/Term Contract
- Just-Cause (Unionized)
- Satisfaction (offers employee some additional protection)
- Leased

Types of Performance Appraisals

- Traditional Formative
- Traditional Summative
- Portfolio
- 360-Degree Feedback Based
- Team-Oriented
- Combination 360-Degree and Traditional (*preferred by most HR practitioners*)
 - Provides confidential feedback on competence and behaviors for development purposes and makes traditional measurements of the employee's accomplishments or results which can be used for rewards or merit increases

Setting Performance Objectives

Understand the need for objectives

- Understand what effective objectives are:
 - Observable and measurable
 - Specific
 - Constructive
 - Relevant to the job requirements
 - Within the employee's sphere of control
 - Achievable (given time and resources)
 - Limited in number
- When writing specific objectives, always include:
 - A specific action
 - A measurable result
 - A time frame for completion
- Performance improvement plan should also include:
 - Need for training or special direction
 - Necessity for interim performance evaluation
 - Identification of an Employee Assistance Program (if applicable)
 - Personal improvement suggestions by employee

Accurate Performance Evaluation

The following tendencies can reduce the effectiveness of evaluations:

- **The Halo Effect:**
The tendency of an evaluator to rate a person good or bad on all characteristics based on an experience or knowledge involving only one dimension.
- **Leniency Tendency:**
A tendency towards evaluating all persons as outstanding and to give inflated ratings rather than true assessments of performance.
- **Strictness Tendency:**
The opposite of the leniency tendency; that is, a bias towards rating all persons at the low end of the scale and a tendency to be overly demanding or critical.
- **Average Tendency:**
A tendency to evaluate every person as average regardless of major differences in performance.

Conducting the Appraisal

- Create a positive, communicative atmosphere
- Begin by affirming the employee's abilities
- Be sensitive to employee feelings
- Make the appraisal a two-way affair
- Arrive at a mutual agreement
- Focus on the employee
- Should allow an appropriate amount of time for discussion (typically, at least an hour)

Performance Appraisal Follow-Up

Performance appraisal is an ongoing responsibility

- Set a timetable for reviewing progress – no surprises
- Helps keep employee action plans on track
- Provides feedback on what is happening
- Creates dialogue on performance
- Gives supervisor an opportunity to offer help and support
- The more status checkpoints, the better

Employees need reinforcement to achieve and maintain high levels of performance

Avoiding Liability

- Maintain an ongoing file of performance throughout the year
- Do not refer to the employee's race, color, religion national origin, gender, age, marital status, height, weight, disability or union affiliation
- Evaluate employees in a group on the same schedule/frequency
- Be forthright and candid (increases effectiveness)
- Be consistent
- Train your evaluators
- Make sure that factual information can be supported
- Have the employee sign off on the receipt of the evaluation
- Make sure the evaluation is relevant
- Be aware of any bargaining unit provisions

Documenting Performance

- Verbal Correction
- Written Warning
- Investigatory Leave
- Last Step Options
 - Final Written Warning
 - Probation
 - Last-Chance Agreement
 - Unpaid Suspension (used with final written warning)
 - ✓ Disadvantages
 - ✓ Appropriate use – willful misconduct, egregious behavior such as retaliation/harassment (hint: evaluate malicious intent)
 - Decision Making Leave (used with final written warning)

Discussion: Documentation Phrasing

"You were hostile toward a parent"

"You violated Policy #2115 Time-Keeping Procedures"

"You left your office very untidy"

You appeared to be under the influence of alcohol"

Tips

- Use your senses to describe
- Change subjective statements to objective ones
- Describe in behavioral terms
- Include the negative organizational impact that resulted from employee's actions

Documentation: What's In Your Files?

Bullard-Plawecki Employee Right-To-Know

- Defines a personnel record and list exclusions from personnel record
- Basically says that employees have the right to know what is in their file and to view/copy it at reasonable intervals – typically twice a year
- Employees also have the right to attach a written statement of explanation
- Restricts divulging discipline to a third party
- Four-year rule – An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered in a legal action or arbitration to a party in that legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of a disciplinary action which are **more than four years old**.

Personnel Files

File Retention

- Evaluations/discipline should be retained in personnel file for at least three years after termination
- May want to keep longer in case of any delayed legal wrangling

FOIA

- Evaluations/discipline information/parent complaints are all subject to request
- Exemptions are treated very narrowly
- Public entity has burden of proof
- Not superseded by policy or collective bargaining agreement
- Do not necessarily need to release anecdotal notes unless you intend to use in a court proceeding or make part of the personnel record
- Can redact privacy protected information like social security and phone numbers
- Should not disclose personal information that reveals intimate or embarrassing details of an individual's private life.

Probationary Periods: Non-Tenured, Non-Instructional Staff

- "Probation" can imply contractual obligations (Consider calling it introductory, evaluation, initiation, orientation, etc.)
- Generally 60 – 90 days
- Arm yourself with as much flexibility as possible when evaluating new employees
- Clarify in handbook and employee communications

Discipline

- Intended to correct behavior – encourage success
- Not about negative strategies and control
- As much art as science
- Reflects our concern for workplace democracy
- Attracting and retaining the best = encouraging people to be their best
- Progressive Discipline
 - ✓ Means of communicating problem issues directly and in a timely fashion
 - ✓ Involves the employee in the problem solving process
 - ✓ For at-will employees make sure that you preface in your employee handbook or written policy with a disclaimer making clear that the system is discretionary and that it does not impact upon the fact that employees may still be terminated at will.

Discipline

Key Questions

- Is the discipline prohibited by any state or federal law?
- Is the discipline consistent with your policy?
- Is the discipline consistent with any bargaining unit provisions?
- Is the discipline fair and reasonable?

Due Process

- Legal theory called the "job as property doctrine" (14th Amendment)
- Recognizes an employees right to be "informed" and provide a defense
- Property right places an obligation on management to deal in good faith, and to take corrective action based on "just cause" (i.e., good reason)
- Consider employee right to representation
 - Weingarten Decision – US Supreme Court & State Law
 - Been extended to non-union employees in recent cases
- Implies that you must have **clear, compelling and justifiable** reasons

Classifying the Infraction

- Policy/Procedure Violation
 - ✓ Written company standard – failing to get approval
- Performance Transgression
 - ✓ Failing to be productive or meet outcomes
- Behavior/Conduct Infraction
 - ✓ Undermining authority, failure to follow directives
- Absenteeism and Tardiness
 - ✓ Workflow is negatively impacted by absence/lateness
- *Please remember...*
- Classification is critical if discipline is to be truly **progressive**
- Incidents must be related or linked to progress
- Most issues can be placed into one of these categories

Elements of Due Process

- Employee must understand your expectations and the consequences
- Employer must be consistent (and predictable) in application of rules
- Failure to follow through on a consequence damages the credibility of your discipline system and sets an *unintended precedent*
- Must be appropriate for the offense
- Employee should have opportunity to respond
- Need to provide employee with reasonable time to improve performance

Discharge/Termination

- Often, wrongful discharge cases are not decided on a legal basis, i.e., whether an at-will relationship existed or not
- More likely to be determined on what the jury thinks is reasonable and consistent

Helpful Hints

- Develop an employee evaluation system that is consistent, realistic and accurate
- Accurately and completely document the employee's performance deficiencies, as well as warnings to the employee and receipt of them
- Personally meet with the employee to discuss problems
- Adopt a formal progressive discipline system in which employees are given advance warnings about their deficiencies and an opportunity to improve prior to termination
- Give a last-chance warning in lieu of termination, particularly with long-term employees

Discussion: Summary Discharge

With all this emphasis on progressive discipline, can you actually fire anyone in the moment?

What would be some situations where you could do this?

Termination Process

- Seek legal counsel prior to employee discharge if you anticipate any problems
- Key Questions:
 - What is the reason for discharge?
 - How does the articulated reason match up against your company handbooks, policies/procedures, and/or representations?
 - How strong is your evidence?
 - Has previous progressive discipline been documented?
 - What do employee evaluations and employment record say?
 - How have similar situations been handled in the past?
 - Has the employee's side of the story been obtained?
 - Are there compelling explanations or sympathies in favor of the employee?
 - Would a transfer/job change alleviate the problem?

Just Cause

- Notice
- Reasonable rule or order
- Investigation
- Fair Investigation
- Proof
- Equal treatment
- Penalty

Question and Answer: What's on Your Mind?

Helpful Resources

- www.michigan.gov/mde
Michigan Public Schools Records Retention Guide
Revised School Code
- www.michiganlegislature.org
Bullard-Plawecki ERTK Act
Freedom of Information Act
Michigan Compiled Laws
- www.michamber.com
Michigan Chamber of Commerce *Employment Law Handbook*
- *What to do About Personnel Problems in Michigan* - Business and Legal Reports
- *Ten-Minute HR Manager* - Business and Legal Reports
- *101 Sample Write-Ups for Documenting Employee Performance Problems* - Paul Falcone
- *Effective Phrases for Performance Appraisals* - James E. Neal, Jr.
