Performance Appraisals In Law Firms: Yes, They Do Matter

presented by
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Equal Employment Opportunity

1. Protected EEO Groups
   a. Federal
   b. State
   c. Local

2. Examples of “protected groups”
   - Age
   - Citizenship
   - Disability (physical or emotional)
   - Gender identity and expression
   - Genetic information
   - Marital status/Parental status
   - National Origin/Ancestry
   - Pregnancy
   - “Protected” complaints
   - “Protected” leave
   - Race/Color
   - Religion/Creed
   - Sex
   - Sexual orientation
   - Veteran’s Status/Military status
PERFORMANCE APPRAISALS

Introduction

1. Common Criticisms of Appraisals
   a. Discourage teamwork/collaboration
   b. Foster short-term orientation
   c. Discourage prudent risk-taking
   d. Too Subjective
   e. Add value only at extremes
   f. Too inconsistent
   g. Autocratic
Introduction

2. Benefits of Appraisals
   a. Establish Expectations
   b. Communicate deficiencies (pre-discharge notice)
   c. Increase Consistency (by ensuring common criteria)
   d. Provide benchmarks for subsequent distinctions among employees
   e. Recognize (and retain) value performers

3. Recommendations
   a. Continue to conduct appraisals
   b. Problems relate to implementation, not inherent to appraisals
   c. Redesign to minimize problems, but retain for legal/HR benefits
Elements of Appraisals

1. Establishing the Criteria
   a. Importance
   b. Specific examples
      i. Traditional
      ii. Contra-criticisms
      iii. Values
      iv. Leadership
   c. Open criterion
   d. Linkage

2. Applying the Criteria
   a. Purposes
   b. Responses
      i. Evaluating of evaluators
      ii. Comparator question
   c. Employee input
      i. Self-Appraisals
   d. Uniform date for appraisals
   e. Timing issues
      i. When
      ii. Why important
Elements of Appraisals

3. Honesty
   a. Problems with absence of candor
   b. Truthful, but respectful

4. Forward looking
   a. Establish realistic goals
   b. Areas for growth/improvement
   c. Next steps in career

5. Linkage to Pay
   a. General - a “factor”
   b. Specific - formula
   c. Timing
      i. If linkage - same time
      ii. If no linkage - different time

6. Connection to Disciplinary Process
   a. In addition to, not in lieu of

7. 360 Reviews
Conducting the Appraisal

1. Where?
2. Who present?
3. Respect
   a. Truthful
   b. Balanced
4. Signature
5. Open-minded
6. Listen

Implementation

1. Signature
   a. Usually unnecessary
   b. If require, require only acknowledgement of receipt as opposed to agreement
2. Personnel File
   a. All appraisals in formal personnel file
   b. Supervisors may maintain separately “informal notes”
Informal Feedback

1. Humanize Self
   a. Be a person
   b. Show empathy
   c. Share interests

2. Inspire Calm
   a. Stressful times
   b. Maintain control
   c. Open conversations

3. Give Thanks
   a. One-on-One
   b. Group settings
   c. Yes, it’s their job but so what
Informal Feedback

4. Minimize Closed Door Meetings
   a. Problem with “Open Door” Policy
      i. Bring the door to them
      ii. Get out of your office
   b. Problems with “Closed Door”
      i. Limits communication
      ii. Creates tension
      iii. Inspires nervousness

Informal Feedback

5. Checks Ins
6. Listen
   a. Easier said than done
   b. Put down the smart phone
Common Appraisal Mistakes

1. Late Evaluation
   a. Employee relations issue in terms of employee’s value
   b. Window for preemptive legal strike
   c. Timeliness is critical

2. Over-evaluation
   a. False sense of security—employee
   b. Devalue excellence of others
   c. Possible evidence of bias (pretext) if subsequent adverse action
   d. Ratcheting down evaluations
Common Appraisal Mistakes

3. No or inadequate comments
   a. No guidance so improvement less likely
   b. Absence of legal foundation
   c. Start with comments

4. Suggest All Inclusive
   a. Closes the record (arguably)
   b. Make clear examples only
5. Focus on Cause
   a. Irrelevant and diversion
   b. Potential Predicate for ADA perceived disability claim
   c. Focus on behavior/performance, not perceived cause
   d. Report voluntary disclosures of medical emotional conditions to HR

6. Focus on Intent
   a. Too personal
   b. Cannot prove it
   c. Focus on outcome, not intent
Common Appraisal Mistakes

7. Absolutes
   a. Overstated so unfair
   b. Legally assailable—goes to credibility
   c. Avoid absolutes

8. Halo Effect
   a. Hurts recipient
   b. Focus on areas for growth for all employees
Common Appraisal Mistakes

9. Horn Effect
   a. Debilitates employee
   b. Possible evidence of bias
   c. Balance

10. Inconsistency between comments and rankings (either way)
    a. Mixed message
    b. Possible evidence of bias (pretext)
    c. Begin with comments
Common Appraisal Mistakes

11. Inconsistency between current and prior evaluation (without interim notice)
   a. Unfair, if surprise
   b. Apparent inconsistency possible evidence
   c. Begin with prior evaluation
   d. Mid-year notice
   e. New Supervisor: focusing forward without denying past

12. Inconsistent applications of standards
   a. Unfair if closer or harsher scrutiny
   b. Possible evidence of bias
   c. Comparator question
Common Appraisal Mistakes

13. Considering last event only or prior evaluation period
   a. Unfair to employee
   b. Unfairness as possible evidence of bias
   c. Focus on current period only, except re: on going problem

14. Bundling protected absences
   a. Example: FMLA, Military
   b. Unbundling
Common Appraisal Mistakes

15. Unilateral rather than bilateral
   a. Employee comments
   b. Supervisor comments

Best Practices

1. Continue to conduct appraisals
2. Be timely, honest and fair
3. HR/Administrator review, if feasible
4. Train appraisers regarding benefits of well-drafted appraisals and risks of poorly-drafted appraisals
Your opinion matters!

Please take a moment now to complete the evaluation.

Thank You!