

Blog Post

Don't Be Left Out in the Cold on Effective Performance Reviews: Five Tips You Need to Know

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'Tis the season for employee performance reviews! In the midst of the chaos that is the holiday season and end-of-year deadlines, employee performance reviews are often scheduled during this busy time of the year. An impending performance review may cause stress and angst for both the manager who has to issue the performance review and for the employee who is on the receiving end of the feedback, but it does not have to be that way. Employers should resist the urge to approach employee performance reviews as another box to check off the holiday "to-do" list, and make sure to follow these five best practices:

1. Provide Adequate Training for Reviewers

Reviewers should be trained on how to be objective, clear, honest, and timely when conducting employee performance reviews. Reviewers must learn how to communicate the employer's goals and expectations; how to answer questions commonly raised by employees on topics like compensation, training, promotions, attendance, job duties, and responsibilities; and how to ensure objectivity and consistency during the evaluation process.

Reviewers should especially be trained on how to maintain professionalism during performance review meetings and how to respond appropriately

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to situations where an employee may be overly emotional, stressed, sarcastic, disrespectful, or inappropriate during a performance review meeting. Reviewers should be able to identify employee comments and feedback that may suggest the employee is complaining about the employer's business practices, discrimination, harassment, or retaliation on the job, and trained on how to appropriately respond to or escalate those complaints. By training reviewers to be sensitive to these issues, employers can best ward off litigation down the road, or at least be better prepared to articulate the nature and extent of performance deficiencies identified, training or other assistance offered, and the scope of any concerns that were raised and addressed by the employee. Taking these precautions may also have a significant positive impact on employee morale and prevent discriminatory bias from entering the review process – a “win-win” situation.

2. Use Objective Performance Review Forms

Performance reviews are commonly conducted in-person and often designed to be a conversation between the reviewer and the employee. An employee's performance review should be based on objective performance indicators or metrics that can be reduced to writing in a uniform document. If there is room for improvement, or deficiencies noted, the reviewer should include the path to success, including additional training or specifically defined expectations, and provide encouragement for the employee to reach those goals. Performance review forms should be tailored to the job skills and performance indicators of an employee's position. Employers should also assess whether customized performance review forms are needed to address specific skills for a subset of their workforce.

Employers should also consider whether to offer the option for self-evaluations by having employees answer specific questions about their performance. On the one hand, this option provides employees with the opportunity to self-reflect on their progress

before receiving feedback from their reviewer, and also provides the reviewer with insight on how employees view their own performance, creating a robust opportunity for an open and honest discussion. In a perfect world, self-evaluations would be perfectly aligned with the employer's assessment, achieving a consensus of an employee's strengths and weaknesses and unified goals to reach by the next review period. However, when an employee's self-evaluation is remarkably different from the reviewer's ratings, oftentimes several points above or otherwise a total "disconnect," this could become a morale buster – and potentially create "bad" evidence to support an employee's discrimination claim of unfair scrutiny – even if unfounded. Thus, employers should think carefully as to whether self-evaluations will support or hinder their goals of a creating and maintaining a productive and reliable performance evaluation system.

3. It Takes Two... Conduct Performance Review Meetings Timely, Comprehensively, and With A Witness/Collaborator

Ideally, performance review meetings should be attended by both (1) the **reviewer** (typically the manager or supervisor most familiar with the employee's performance during the relevant period); and (2) a **witness**, either a representative from human resources or another member of management. The witness can also serve as the notetaker, allowing the reviewer to maintain a conversation-like discussion with the employee, while avoiding a "he said, she said" dilemma later on. A reviewer should not have, or demonstrate, any inherent bias towards the employee being reviewed. If there is a concern that a reviewer cannot give an objective performance review, or will not be well received by the employee, an alternative reviewer should be considered. Employers should also consider having levels of approval or collaboration beyond the reviewer, including a higher manager, and a member of human resources to sign off on all

evaluations, to provide for “checks-and-balances” and best ensure a fair, impartial, and consistent evaluation system. This will reduce the perception that there is favoritism or negative opinions from reviewers about an employee or a group of employees.

It is equally important to conduct reviews on a consistent schedule (e.g. bi-annually or annually) and adhere to any written policies and/or practices addressing the schedule for employee performance reviews. Reviews should measure an employee’s performance throughout the entire review period, not just based upon recent events. If necessary, reviewers should go back through performance data, notes, emails, and other evidence of the employee’s performance to ensure a comprehensive assessment. Conducting late, untimely, or incomplete reviews may give the perception that the employer does not take performance reviews seriously or that they are pretextual.

4. Be Forthright and Solicit Employee Feedback

Reviewers must be honest about an employee’s strengths and weaknesses and provide detailed and accurate feedback without allowing the fear of hurting the employee’s feelings to compromise the review process. Reviewers should ensure the employee receives notice and clear information on the specific areas needing improvement. Should an employer decide to promote, demote, discipline, or terminate an employee because of their performance, it is important that the performance review accurately reflects and supports the employment decision. Failing to give an honest review could potentially hinder an employer’s defense to a subsequent workplace claim.

Reviewers should also provide an opportunity for the employee to provide any comments or feedback. This is a key opportunity to address any problems or concerns the employee may have about their

performance and overall feelings about their job. If an employee refuses to sign their performance review, the reviewer should note on the form the date the review was issued, and that the employee refused to sign the document. This extra step prevents confusion later on if the employee challenges their awareness of the feedback and/or whether they attended the review meeting.

5. Preserve, Escalate, and Address Employee Concerns

All performance review forms, notes, and any other supporting documentation should be preserved in the employee's personnel file. Reviewers should promptly report complaints of unfair treatment, discrimination, harassment, retaliation, or other workplace grievances aired during the performance review meeting to the appropriate company representative (such as human resources) consistent with their company's reporting policies and procedures. Reviewers should avoid the impulse to ignore or disregard these complaints as mere emotional responses or disapproval of the feedback given during a performance review meeting.

Key Takeaways

Employee performance reviews serve a vital role in the employer/employee relationship. They provide an opportunity for managers to address performance issues or praise an employee for their work, discuss promotions, training, and other opportunities for professional growth, and of course, compensation! They also allow managers to gauge the overall morale of their team and to identify areas of concern which, if timely addressed, may minimize risk in the future – if done correctly. The absence of performance reviews or poorly administered performance reviews can be the basis for workplace claims. The key to avoiding these claims is developing a comprehensive employee performance review process that consists of training reviewers; drafting appropriate performance review documentation; executing the performance review

meeting effectively; and taking appropriate follow-up actions after the performance meeting is conducted, if necessary. Employers should consult their Akerman Labor & Employment Attorney for assistance in reviewing and improving upon their employee performance evaluation systems.

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