
*The Legal Side
of Evaluating Performance*

T r a i n i n g L e a d e r ' s G u i d e

Coastal Training Technologies Corp.
500 Studio Drive
Virginia Beach, VA 23452

Dear Trainer,

Today, almost every state has the “employment at will” doctrine and, in spite of it, thousands of lawsuits are still being filed by disgruntled employees. Companies are under the impression that because they reside in an “employment at will” state they do not have to worry about the legalities of performance evaluation.

It is important for companies to know the exceptions to “employment at will.” Some exceptions to the doctrine are termination of an employee in a protected class and termination in violation of public policy, such as filing for workers’ compensation benefits and whistle blowing. For example, a company cannot terminate an employee in a protected class (age, sex, race, color, religion, national origin, handicap or pregnancy) without cause. If the company alleges poor work performance, but has no records (or has records showing high performance evaluations), suddenly the burden will shift to the company to show a nondiscriminatory reason for the termination. Without doing anything discriminatory, a company can look very suspicious in court if it cannot back up its verbal assertions with well-documented performance evaluations.

If you follow the steps outlined in *The Legal Side of Evaluating Performance*, your company will be in a much better position to fend off potential suits. In fact, an employee may be less likely to take the initial steps in seeking legal action if they are aware of the documentation process preceding the termination. However, should you be sued, you have a much better chance of winning the first round, be it in the unemployment claim, the civil rights commission, or the district court.

In conclusion, educate your staff on the “employment at will” doctrine, and take the proper precautions to help save your company thousands of dollars in legal fees. It is worth it for your employees to know the legalities of performance evaluations.

Sincerely,

A handwritten signature in black ink that reads "Angela Swanson". The signature is written in a cursive, flowing style.

Angela Swanson
Attorney at Law

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P r e p a r a t i o n M a t e r i a l s

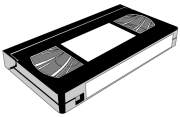
Introduction

A properly conducted, legal performance appraisal can be a valuable tool in motivating employees to increase their job performance from its current level to a higher, more beneficial level. That's good for your employees and for your organization.

The Equal Employment Opportunities Commission's regulations require that any measurement made to distinguish between employees must be fairly administered in order to be valid. These measurements, which include performance appraisals, must be clearly communicated, relevant to job requirements, and must specifically communicate to the employee how well he or she is doing on the job. In other words, a fair and impartial performance appraisal system is required by law. How well you conduct your appraisals determines not only how effective they are in supporting your personal decisions, but also how legally defensible your performance appraisals are if contested in a court of law.

The purpose of the video, THE LEGAL SIDE OF EVALUATING PERFORMANCE, and Training Leader's Guide is to provide the information and techniques necessary to carry out a fair and legally sound performance evaluation.

Trainer's Instructions



Planning Your Training Session

Whether you're conducting a seminar, workshop or leading a formal discussion, you will find that the video presentation and training guide will serve as a strong foundation for your training session. With additional preparation and planning, you will provide session participants with a valuable learning experience.

The following comments are considerations which may be helpful in developing an effective session, useful to participants as well as to your organization.

1. Preview the videotape at least once, preferably twice, prior to planning your training session. The more familiar you are with the material, the more comfortable you will become in planning your training session. With proper preparation, the session will be enjoyable for you and meaningful to your participants.
2. When reviewing the Training Leader's Guide, pay particular attention to the section titled, "Synopsis of Information," on page 12. This section highlights important points of the video which you may want to emphasize to the participants. Additional training tools are located in the back section of this guide. Feel free to incorporate these into your presentation.
3. In order to understand legally conducted performance appraisals more thoroughly, you may want to review some of the articles suggested in the section titled "Additional Resources," page 24.
4. If appropriate, visit the department in your organization that coordinates your performance appraisal system. Find out how the system in your organization is conducted. You may wish to have copies made for the participants of your company's policies and procedures pertaining to appraisals if your company has them available. Reviewing these procedures during your presentation could be beneficial.
5. Develop specific objectives for your session. These objectives should focus on the needs of your organization and what you want to accomplish in the session. Keep your objectives simple and focused on the needs of the audience. These objectives will help keep your session on target.
6. Decide on a format for your training session. A "Suggested Format for Training" has been placed, on page 17 in this guide for your benefit. You may wish to use it entirely or you may want to add your own ideas.

● Preparation Materials



7. Try to think of personal examples, or examples that you have heard regarding performance appraisals to discuss during the session. These “close-to-home” examples help generate interest in the topic and make your presentation more relevant. Invite your participants to discuss past problems they have had with performance appraisals.
8. Be sure that all logistical items are taken care of; for example, reserving the room, having enough seats for participants and having the proper equipment available. A good tool for doing this is the “Training Session Checklist,” on page 9.

Training Session Checklist

Location

- Room reserved
- Relaxed environment
- All seating with good view of visuals
- Enough light for taking notes
- Smooth writing surface
- Good acoustics

Video Equipment

- Right format for the tape
(VHS, 3/4 U-Matic, BETA)
- Properly connected to monitor
- Tape re-wound and ready to play
- Test run the VCR, check for proper picture, color and volume

Preparation

- Preview the video twice
- Review the Training Leader's Guide and design your session
- Read and review related materials
- Prepare an outline of what you are going to cover
- Prepare an introduction
- Make enough copies of handouts for all participants
- If using equipment other than VCR check for proper operation

Goals of the Training Session

After attending this training, participants will be able to:

- Explain the legal guidelines that must be adhered to in the performance appraisal process.
- Document job performance to assist in the performance appraisal process.
- Work with employees in setting goals and standards for measurable job performance.
- Identify common errors in the performance appraisal process.
- Communicate effectively with employees about job performance.
- Develop skills to conduct legally defensible performance appraisals.

*The Legal Side
of Evaluating Performance*

T r a i n i n g M a t e r i a l s

Synopsis of Information

The courts are paying more attention to the manner in which performance appraisals are conducted. They are examining performance appraisal systems not only as civil rights obligations, but also as contractual agreements. Employees have a right to be evaluated solely for their work and not their age, sex, race, handicap or even personal traits.

To avoid the legal pitfalls in evaluating employees' work, employers need to base their performance appraisal systems on:

1. Open and honest two-way communication
2. Proper documentation
3. Consistent, bias-free assessment of an employee's work

Communication

Effective communication begins by letting the employee know **EXACTLY** where he or she stands in the appraisal process. You must clearly state specific job related goals and standards. These goals and standards must be stated in a precise manner. Goals and standards the employee is judged on must be objective and defined in measurable terms. If there is any doubt as to whether your goals and standards meet these criteria ask yourself these questions. Are the goals related to the job? Can you actually observe the employee's behavior? Can you actually measure his or her success in some way?

In any legally-sound appraisal system, you must communicate with an employee if there is a problem with his or her work. Communicate any problems you're having with an employee's work in a **CLEAR** and **CANDID** manner. Problems that arise should be discussed immediately. It is also extremely important to **COMMUNICATE** to the employee **EXACTLY** what will happen if the problem is not solved.

How To Communicate In The Appraisal Process

To ensure that clear and candid communication takes place, review EACH written goal and job standard with the employee. As you examine the goals and standards, continually ask for feedback to be sure that you are communicating. You may even have the employee repeat or explain the job standards or goals. Look for any body language or pauses in the flow of the conversation that indicate the employee doesn't understand. If there is any doubt, stop and clarify the point in question.

Good communication is a two-way street. You need to do your part by being a good listener. Show the employee that you are interested and listening with good body language. You can reinforce the fact that you are actively listening by appropriately responding to comments, questions, or concerns.

Proper Documentation

Any documentation related to a performance appraisal must be ACCURATE, SPECIFIC, and CONCRETE. Documentation must be based on facts and your own observations of work behaviors. Avoid written statements based on personal traits, hearsay, and innuendo. Record only JOB-RELATED behaviors.

It is important that you keep an on-going record of incidents, activities, and achievements, formally or informally. Keep track of anything that may have an impact on your assessment of the employee. This may include any notes, memos, or anecdotes which support your evaluation.

It is extremely important to document any problems that you may have with the employee concerning his or her work. Document the fact that the employee is aware of the problem and what the outcome will be if the problem is not corrected. Any omission of written documentation, in which an employee has been notified that a problem exists, may create a difficult legal problem.

Be SPECIFIC in your documentation by answering the questions WHO, WHAT, WHERE, WHEN, WHY, and HOW. Keep your documentation simple and to-the-point. LESS IS MORE.

Any time it is necessary for an employee to review the information or assessment, be sure to have them sign or initial the document. This indicates that they have had the opportunity to go over the information.

It is extremely important to be consistent in your documentation. To avoid any accusations of discrimination you need to record information on ALL employees and not just single out one person.

Bias-Free Assessment

For a performance appraisal system to be valid and legally sound it must be free from the biases, intentional or not, that cause discrimination. There are several common biases or effects to be aware of, and avoid, when evaluating employees.

HALO TENDENCY

The **Halo** effect or tendency is when certain employees are rated higher than others just because they are well liked.

HORN TENDENCY

On the other hand, the **Horns** effect or bias is when an employee is rated lower because he or she is not liked or popular.

CENTRAL TENDENCY

Central Tendency biases occur when the evaluator fails to give high or low evaluations and “lumps” everyone in the middle to avoid any problems. This tendency not only impairs the efficiency of any appraisal system, it also creates unfair job reviews.

RECENCY TENDENCY

This bias occurs when the evaluator looks only at the most recent accomplishments or problems that the employee has had, rather than reviewing an employee’s work over the entire evaluation period.

SIMILAR-TO-ME TENDENCY

This bias occurs when the evaluator rates an employee’s performance higher because he or she has had the same interests, traits or values as the employer.

Story Line

We begin with a courtroom scene. Martin Coleman is on the witness stand testifying that he was wrongfully discharged by his former employer. Martin contends that he was never notified there were any problems with his work. Connie Johnson, Martin's superior, and her company (the defendants in this case) emphatically state that Martin did receive notice, both verbally and in writing, that if his unacceptable work behavior didn't cease the company would let him go.

When asked to produce the written documentation proving Martin was notified, the defendants could not. The documentation had been erased from a computer disk by mistake.

As the courtroom scene fades, we see Ms. Hanson, a consultant in the field of conducting performance appraisals, conducting a training session. We find that Ms. Hanson was recently involved in the court case described in the opening of our story. She is using examples from the court case to emphasize major points to her participants.

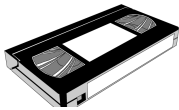
As participants ask questions and interact with Ms. Hanson, our story moves back-and-forth from the drama of the courtroom to the information being presented in the training session. In doing so, Ms. Hanson is communicating the critical aspects of developing and maintaining a legally-sound performance appraisal system.

In the courtroom, evidence is being continually introduced to prove the company and Connie Johnson did have a fair, legal and non-biased performance appraisal system in place.

After reviewing the information presented, the judge rules in favor of the defendant, Connie Johnson, and her company.

Suggested Format For Training

Trainer's Instructions



Our suggested format for achieving maximum benefit from this training is a 1-to-2 hour session concentrating on the legal aspects of performance appraisals. A good foundation for this is an introductory session on the importance of performance appraisals. You may wish to consult Coastal's video, *THE HUMAN TOUCH PERFORMANCE APPRAISAL*, for session strategies and techniques.

Step One. Discuss with participants the goals of the training session. To help emphasize the importance of this subject, reproduce the summary of court rulings dealing with performance appraisals (located on page 22) for each participant.

Step Two. Have participants complete the five-question "Pretest" on page 27. After they have completed the test, go through the correct answers with them. These questions can be used as good discussion starters.

Step Three. Introduce and show the video *THE LEGAL SIDE OF EVALUATING PERFORMANCE*. The video contains important information and techniques for participants on how to conduct legally defensible performance appraisals.

Step Four. After the video has been shown, we suggest discussion to help re-emphasize important ideas. Handouts have been provided at the back of this guide which refer to important points in the video and can be reproduced or used as overheads.

Example: Think of a situation within your organization which would require documentation. Explain the situation verbally to your participants and ask them to document the event. Once they have completed their documentation, split them into groups of three and have them critique each others' documentation.

Step Five. Ask for questions and/or comments about your session. If there is no other discussion, administer the "Post Test," provided on page 39, to test the knowledge transferred to your participants. Go through the correct answers with them before they leave the session.

Step Six. 1 to 3 weeks after your session, follow up with participants by sending them *THE LEGAL SIDE OF EVALUATING PERFORMANCE* Desk Reminder Cards. These cards can be kept in their work areas and act as a reminder of the main points in the video.

Step Seven. You may also wish to consider a follow-up training session using Coastal's video *DOCUMENTING DISCIPLINE*.

Questions For Discussion

Q. Why is the employee's comment, "My wife has cancer," not an acceptable excuse for low job performance?

A. It is not an acceptable excuse because it is not related to job performance. An employee must be evaluated solely on job performance.

Q. In the performance appraisal process, what is the first step to take to avoid legal pitfalls?

A. Be sure your employees know and understand the goals and performance criteria of the job in advance. When employment begins, or when new standards are adopted, written job goals and performance criteria should be modified and copies of the changes given to the employees.

Be sure to base performance evaluations on whether the employee meets these standards or criteria. These standards or criteria must be measurable and identifiable so employees know exactly what is expected of them.

Communicate the goals and standards both in person and in writing, asking for feedback so you can be absolutely sure the employee understands.

Q. How can you be sure that you have communicated the job description and performance criteria to the employee?

A. To be sure that you have communicated, make it a two-way process. Be an active listener and ask for feedback to be sure that the employee understands what was said. If the employee disagrees with the terms or the outcome of the appraisal, provide room on your appraisal sheet to include these comments.

Q. Why is it important to emphasize work behaviors rather than personal traits?

A. Any time that you emphasize personal traits instead of work behaviors, you could be creating unwanted legal problems. Judgment of an employee's work based on personal traits opens the door to charges of discrimination and bias in the performance appraisal process. To avoid these problems, make sure that the information gathered for your appraisal is employee-objective, measurable, and solely related to work behaviors.

Q. How important is it for a supervisor or manager to inform an employee that his performance is unacceptable or is creating problems?

A. Most legal challenges by employees are upheld when performance problems are undisclosed, or worse yet, not documented. Managers and supervisors sometimes avoid the unpleasant task of providing negative feedback, thus leading to legal problems. You must inform the employee, both verbally and in writing, that problems exist. Be sure to communicate to the employee exactly what the problem is and what will happen if the problem is not resolved. Communicate problems immediately. Don't forget to document that the employee is aware of the problem, and what the outcome will be if the situation is not corrected.

Q. What are some of the most important considerations to keep in mind when documenting performance?

A. Your documentation needs to be ACCURATE. Record only the objective facts concerning the actual appraisal. Record the facts as they occur and not later from memory. Keep your documentation consistent by recording both the positive and negative aspects of an employee's performance. Maintain documentation on each employee in the group.

Q. Why is it important to discuss with the employee what will happen if his or her performance doesn't improve?

A. Many employees will not take their reviews seriously. By stating what will happen and emphasizing that you will follow-up, you are showing the employee that you are serious and that he or she should take it seriously also. You want to prevent the employees stating they didn't know they were going to be disciplined if they didn't improve.

Q. Why should you use the same techniques in documenting all employees?

A. Accusations of discrimination can arise if you don't document all employee incidents in the same manner. A consistent, job-related, documentation system is a valuable tool in maintaining a legal performance appraisal system.

● Training Materials

Q. Explain the recency error and why it can have a detrimental effect on your performance appraisals?

A. The recency error occurs when the evaluator only looks at the most recent accomplishments, or problems the employee has had. By doing this, the evaluator is not taking into consideration the employee's work over the entire evaluation period.

Q. How can you be sure that an employee understands what he or she needs to do to improve performance and what will happen if he or she doesn't improve?

A. After discussing with the employee areas of improvement and agreeing on steps to improvement, the steps should be put into writing and the employee should sign the evaluator's copy. On this form, or on a separate form, the consequences of non-improvement should be stated and signed by the employee.

The Law

The legislation most profoundly affecting the practice of performance appraisal systems comes from the Civil Rights Act of 1964, specifically Title VII of the act. Title VII was initially directed toward discriminatory employment selection practices, but development of case law over a period of years has broadened interpretation of the Act now to include performance appraisal systems. Equal Opportunities Employment guidelines, as part of TITLE VII, requires that any measurement made to distinguish between employees must be valid and fairly administered. These guidelines were written primarily with employment or placement tests in mind.

You may find it valuable to locate and reproduce a copy of the regulations pertaining to non-discriminatory employment practices. The easiest way to obtain a copy of the regulations is through your local city or university library. You should request TITLE VII of the Civil Rights Act, Equal Opportunities Employment Commission guidelines, Section 1607.1 (29 CFR Ch. XIV, 7-1-89 edition.)

You many find it valuable to review the following chart. The chart summarizes court cases and rulings which have been significant in developing a legal base for performance appraisals.

Summary of Court Cases and Significant Rulings

CASE	YEAR	COURT	PREVAILING PARTY
Griggs v. Duke Power Co.	1971	Supreme	Employee
SIGNIFICANT RULINGS: EEOC guidelines first endorsed. Adverse impact requires demonstration of job-relatedness. Employer intent to discriminate irrelevant.			
Marquez v. Omaha District Sales Office, Ford Div. of the Ford Motor Company	1971	Appeals 8th Circuit	Employee
SIGNIFICANT RULINGS: Documentation necessary. Misuse of legal appraisal system may violate Title VII.			
Rowe v. General Motors	1972	Appeals 5th Circuit	Employee
SIGNIFICANT RULINGS: Lack of appraiser training condemned. Subjective performance standards condemned. Communication of performance standards required.			
Harper v. Mayor and City Council of Baltimore	1972	District	Employee
SIGNIFICANT RULINGS: Neutral results may indicate discrimination. Consistent evaluation dimensions required.			
Brito v. Zia Company	1973	Appeals 10th Circuit	Employee
SIGNIFICANT RULINGS: Performance appraisals are “employment tests.” Adverse impact requires demonstration of validity of appraisal system. Objective performance standards should supplement subjective standards. Standardized administration and scoring of appraisals required.			

CASE	YEAR	COURT	PREVAILING PARTY
Wade v. Mississippi Cooperative Extension Service	1974	District	Employee
SIGNIFICANT RULINGS: Job analysis required. Appraisal on general traits condemned.			
Albemarle Paper Company v. Moody	1975	Supreme	Employee
SIGNIFICANT RULINGS: Appraisals as criteria must be job-related. Endorsement of EEOC guidelines regarding criterion development.			
Patterson v. American Tobacco Company	1978	Appeals 4th Circuit	Employee
SIGNIFICANT RULINGS: Job analysis necessary. Objective performance standards required.			
Zell v. United States	1979	District	Organization
SIGNIFICANT RULINGS: Regular evaluations supported. Job-related standards demonstrated. Performance standards properly communicated.			
Ramirez v. Hofheinz	1980	Appeals 5th Circuit	Organization
SIGNIFICANT RULINGS: Subjective performance standards supported. Past record of employer important.			
Turner v. State Highway Commission of Missouri	1982	District	Organization
SIGNIFICANT RULINGS: Documentation complete.			
Carpenter v. Stephen F. Austin State University	1983	Appeals 5th Circuit	Employee
SIGNIFICANT RULINGS: Updated job analysis. Performance standards required to be demonstrably job-related. Appraiser training required.			

Additional Resources

David C. Martin, Kathryn M. Bartol, and Martin J. Levine., "The Legal Ramification of Performance Appraisal," Employee Relations Law Journal, November, 1986, pp 370-390.

Gerald V. Barrett and Mary C. Kernan. "Performance Appraisal and Terminations: A Review of Court Decisions Since Brito V. Zia with Implications for Personal Practice," Personal Psychology, Fall, 1987, pp 489-501.

Robert V. Romberg. "Performance Appraisal, 1: Risks and Rewards." Personnel, August, 1986, pp 20-26.

Shelley R. Burchett and Kenneth P. De Meuse. "Performance Appraisal and the Law." Personnel, July, 1985, pp 29-37.

Edmund J. Metz. "Designing Legally Defensible Performance Appraisal Systems." Training and Development Journal, July, 1988, pp 47-51.

Patrica S. Eyres. "Legally Defensible Performance Appraisal Systems." Personnel Journal, July, 1989, pp 58-62.

By the Editors of the Alexander Hamilton Institute. "Will Your Next Performance Appraisal Land You In Court?" Management Solutions, July, 1986, pp 5-9.

Michael Smith. "Documenting Employee Performance." Supervisory Management, September, 1979, pp 31-35.

David H. Weiss. "The Legal Side of Performance Appraisals." Management Solutions, May, 1988, pp 27-32.

Arron R. Pulhamus. "Performance Appraisal-Why and How You Should Implement a Due Process Approach to Discipline." Supervision, June, 1989, pp 3-6.

Additional Training Tools

The following pages contain additional training ideas which you may wish to use in preparing and presenting your program.

Handouts which can be reproduced have been added to this section. Handouts can prove to be valuable in helping your participants to retain the ideas you present.

Follow-up ideas and techniques to emphasize important points are also included.

You may wish to consider a follow-up training session using Coastal's video, DOCUMENTING DISCIPLINE.

Research has shown that the more avenues you use to get your points across the more your participants will retain.

Invitation Letter

(Variable Date)

TO:

FROM:

RE: Legal Performance Appraisal Training Session

We all know the importance of properly conducted performance appraisals in our organization. Performance appraisals are valuable tools to help our employees grow and keep our company competitive. To conduct performance appraisals appropriately, we not only have to do them on time and fill out the right forms, but we must also keep our legal obligations in mind.

On (variable date and time) you will have an opportunity to take part in a training session designed to give you the knowledge and techniques to conduct a legally sound performance appraisal.

Objectives of the training session are:

- To give you an idea of the legal guidelines of performance reviews
- Allows you an opportunity to develop skills in conducting legally defensible performance reviews
- Teach you how to document employee performance

The training session will be held (variable time and location). Please make every effort to restructure your work day so you can attend this very important training session.

Pretest

1. What are some common errors that occur in the performance appraisal process?

2. In a case where the employee is suing his or her former employer, can a performance appraisal be admitted into a court of law as evidence?

3. T or F Supervisors should only document poor behavior of new employees because veteran employees have proven themselves in the past.

4. When setting standards for job improvement, why is the response, "I'll do better," inappropriate?

5. What is the best time to document an event?
 - A. Always at the end of the day so you get in a routine of doing it.
 - B. As soon as the event occurs.
 - C. The day after the event has occurred so you have time to cool down.
 - D. At the time of the employee's current evaluation period.

Answers to the Pretest

1. Some of the common errors in the performance appraisal process are:

HALO TENDENCY

The **Halo** effect or tendency is when certain employees are rated higher than others just because they are well liked.

HORN TENDENCY

On the other hand, the **Horns** effect or bias is when an employee is rated lower because he or she is not liked or popular.

CENTRAL TENDENCY

Central tendency biases occur when the evaluator fails to give high or low evaluations and “lumps” everyone in the middle to avoid any problems. This tendency not only impairs the efficiency of any appraisal system, it also creates unfair job reviews.

RECENCY TENDENCY

This bias occurs when the evaluator looks only at the most recent accomplishments or problems that the employee has had, rather than reviewing an employee’s work over the entire evaluation period.

SIMILAR-TO-ME TENDENCY

This bias occurs when the evaluator rates an employee’s performance higher because he or she has the same interests, traits or values as the employer.

2. A performance appraisal is a legal document and can be entered into a court of law as evidence. This is why managers must be sure to be consistent, and give fair ratings when doing performance appraisals.
3. False. Regardless, if an employee is new or old, poor performance must be documented or it can lead to charges of discrimination.
4. The response “I’ll do better” is not good in setting standards to improve job performance because it is not specific or measurable.
5. The answer is B. The best time to document an event is immediately after it’s happened, while the exact events are fresh in your mind.

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O v e r h e a d s

PERFORMANCE APPRAISALS SHOULD BE BASED ON:

- **Open and Honest Two-Way Communication**
- **Proper Documentation**
- **Consistent, Bias-Free Assessment of Employees' Work**

COMMUNICATE EXPECTATIONS AND STANDARDS

Goals and Standards Must Be:

- **Stated in Precise Terms**
- **Objective**
- **Described Behaviorally**
- **Measurable**

STEPS IN THE LEGAL PERFORMANCE EVALUATION

- **Goals and Standards Clearly Communicated**
- **Enter Meeting in a Positive Way**
- **Describe the Particular Behavior in Detail**
- **Solicit Feedback and Ask Questions**

COMMUNICATING WITH EMPLOYEES CONCERNING PERFORMANCE

Rule #1

- Discuss problems immediately while events and circumstances are fresh in everyone's mind.

Rule #2

- Communicate any problems that they are having in a clear and candid manner.

Rule #3

- Communicate to the employee exactly what will happen if the problem is not solved.

KEYS TO PROPER DOCUMENTATION

ACCURATE

SPECIFIC

CONCRETE

****Record only JOB-RELATED behaviors****

COMMON ERRORS IN THE PERFORMANCE APPRAISAL PROCESS

- Halo Tendency
- Horns Tendency
- Central Tendency
- Recency Tendency
- Similar-To-Me Tendency

*The Legal Side
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P a r t i c i p a n t M a t e r i a l s

Examples of Good and Bad Documentation

Bad Documentation

To: File of Tom Johnson

Last week I observed Tom coming to work late several times. When I asked Tom what the problem was he said that traffic was bad and that he would work harder to get in on time. Several others in the department also saw Tom come in late.

Good Documentation

December 20, 1990

To: File of Tom Johnson

Last week, I observed Tom Johnson coming to work late three times. On Monday, Tom was 10 minutes late, Wednesday he was 25 minutes late and on Thursday he was 20 minutes late. John Moore and Sue Thomas also witnessed Tom arriving late. I informed Tom that his job requires him to be on time and that by being late he was shifting his responsibilities to others. Tom and I agreed that he would not be late again or it could mean disciplinary action including the possibility of termination, if lateness continues. We agreed to review his performance in thirty days or upon the next late occurrence.

Post Test

1. Place a check mark before the characteristics below which can be taken into consideration when evaluating an employee.

_____ Age

_____ Sex

_____ Job Performance

_____ Personal Traits
2. Why is it important to communicate to the employee what will happen if performance is not improved?
3. If you believe that an employee has a drinking problem should you document it?
4. Why is consistency in documentation important?
5. Explain the central tendency error and tell why it can hamper the appraisal system.
6. What is the first step a manager or supervisor takes to avoid legal problems in a performance appraisal?
7. How can a manager or supervisor be sure they have communicated to the employee the need for improvement, and the consequences if improvement does not occur?
8. What are three keys to proper documentation?
 - 1.
 - 2.
 - 3.
9. Why is the statement “I’ll do better” inappropriate when setting standards for improving job performance?

Post Test Answers

1. Job performance is the only characteristic which can be legally evaluated.
2. An employee must understand the consequences if improvement does not occur. If you have to discipline an employee for not improving, you don't want him/her to complain that they didn't know anything was going to happen.
3. Personal traits should not be documented. If drinking is causing poor performance you can document the poor performance, but not that you think they have a drinking problem.
4. You must be consistent in your documentation to stay away from claims of discrimination.
5. The central tendency error occurs when the evaluator fails to give high or low evaluations and tends to lump everyone in the middle. This error creates unfair job reviews and can cause low morale in departments.
6. Be sure that your employees know and understand their job goals and how they will be evaluated.
7. To be sure two-way communication has been established, ask for feedback and listen carefully. Ask the employee how he or she understands your directions, and make sure both of you are thinking along the same line.
8. Accurate, Specific, Concrete
9. The statement "I'll do better" is inappropriate because it is not specific or measurable.

Demonstration Idea

A strategy used in many training sessions is to use objects not connected directly with your subject to emphasize a particular idea. Below is an idea you may want to incorporate into your session.

Materials needed:

6 bricks, 3 cemented together and 3 separated

(Start your demonstration with the 6 bricks off to the side as you say the following.)

When talking about performance appraisals it has been commented that communication is a major factor in laying the foundation of a good appraisal but proper documentation is what holds everything together and makes your appraisal solid and defensible.

(As you say the following comment take your 3 bricks which are separated and stack them on top of one another.)

The same idea holds true when building a foundation for a house or building. You start with bricks, but they don't work without something binding them together. (At this point take you hand and push the top brick off your stack.)

(Now move your 3 bricks which are cemented together in front of you.)

However, if I do the job right and use the bricks and cement I have a more solid foundation. (At this point try to push the top brick off and show that you have a solid foundation.)

Keep this idea in mind when conducting performance appraisals. You can communicate, but that's only half the job. You must document the performance to hold your appraisal together and to give it strength.