



Best Practices to Avoid Employment Claims

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February 26, 2025

Management Roles and Responsibilities

- **Support all employees:** communicate the direction for your teams, recognize and resolve obstacles, and solve conflicts to optimize performance.
- **Cultivate a Culture of Quality:** communicate our total commitment toward delivering the highest level of quality services and products for our members and guests.
- **Delegate Tasks & responsibilities:** understand each employee's strengths and weaknesses and delegate tasks that keep employees engaged toward successfully achieving company goals.

Management Roles and Responsibilities

- **Hire, Onboard, Train, and Develop:** interview, hire, coordinate, and complete employees new hire process for onboarding, training, and development.
- **Develop Employees:** continually assesses each team member's strengths and abilities that support the development of each team member to reach their full potential.
- **Manage Performance:** provide ongoing feedback to each team member on the level of performance through performance reviews, coaching, and corrective action.

Leadership
Must Set
the
Example!



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Every day - Set People Up for Success

- Understand each member of your team's capabilities, strengths, weaknesses, and career goals
- Proactively communicate your expectations for success
- Meet w/ every member of your team for 1 X 1's, listen, and provide feedback
- Have regular team meetings to create a team that is cohesive, collaborative
- Be a "Coach" to support your employees to achieve results and success
- Care about your people, be Open, Transparent, and Direct

Performance Management Goals

1. Make sure the employee understands the specific performance issues.
2. Express the need for improvement.
3. Give the employee direction on how to achieve improved performance.
4. Get the employee's commitment.
5. **CONSISTENCY CONSISTENCY CONSISTENCY**

When is it time to manage performance?

This is your job from the start!

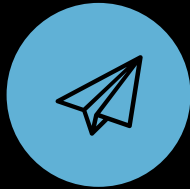
Ask yourself:

- What does the job description say?
- What are the actual day to day responsibilities?
- What are the goals and expectations beyond this?
- Is the work getting done, on time, and with high quality?

Performance Management Documentation



MANAGER NOTES



EMAILS



ONE-ON-ONE MEETINGS



DISCIPLINARY
DOCUMENTS



PERFORMANCE
IMPROVEMENT PLAN –
WITH WEEKLY/BIWEEKLY
STATUS REPORTS

Why is this Important?

- Advises employees of problems and gives them an opportunity to improve performance (i.e., no blind-siding)
- Sets goals for upcoming performance year
- Relied upon for compensation purposes
- Relied upon in reorganizations and reductions in force
- Frequently used as evidence in litigation



What NOT to do when issues arise:

- Ignore them
- Be too nice – you are not friends!
- Be too harsh
- Be too vague
- Be inconsistent
- Fail to document the issues

What to do when issues arise:



Corrective Action Policy/Procedure

Step 1: Documented Discussion

- Informal counseling/coaching with employee.
- Summary of discussion placed in file.

Step 2: Written Warning

- Disciplinary document presented to employee.
- Specific performance failures listed.
- Active for one year.
- Additional problems will advance corrective action.

Step 3: Final Warning or PIP

- Final is similar to Written Warning.
- PIP will have identifiable goals with expected dates of completion – 60-90 days.
- Next step is Termination.

Examples of the Corrective Action Forms

Insert... On X date(s), we discussed the improvement areas that require your attention, focus, and improvement, and I want to provide a summary of them below.

Be clear for each improvement area or goal you provide below, including what is missing or what needs to be delivered, with specific and measurable results that are achievable and if appropriate, with target dates.

- Actual work product, excellence, execution, timeliness, quality
- Teamwork, collaboration
- Productivity
- Meeting deadlines
- Living or not living our values
- Feel free to reference individual goals that need to be accomplished.

I continue to believe that you can meet your job responsibilities and make a positive contribution to the success of our department. It is very important that you immediately raise your level of performance and sustain it to avoid formal corrective action.

[Employee name], I am here to support you. We will continue to meet regularly (weekly) to discuss your progress against the specific improvement areas identified in the detailed plan above.

Thank you for your focus, attention, and follow-through on the actions in this form.

Final Warning vs. Performance Plan

- What is the problem?
 - Timeliness/quality of work?
 - Attendance?
 - Attitude?
- Employee's past performance – is this a pattern or a fluke?
- PIP should be used where identifiable goals can reasonably be achieved.

Benefits of Performance Improvement Plan

- The goal should be to improve performance.
- Don't think of this as something you "have to do" before you can fire an employee.
- Provides clear communication about deficiencies and expectations going forward.
- Should be framed to employee as a commitment to their success.

Performance Improvement Plan Guidelines

- Specific examples of not meeting expectations
- Tangible, identifiable metrics + deadlines for completion
- Follow-up meetings/progress checks
- Date by which sustained improvement must be achieved
- Anyone who reads the PIP should be able to understand the performance concerns, the plan for improvement, and the desired outcomes

When is it time to terminate?

- Forest Highlands employees are employed at-will
- Forest Highlands has the right (and the obligation) to terminate the employment of underperforming people when we have followed our process
- As a Manager— your responsibility is to:
 - Clearly communicate performance issues
 - Provide employees the genuine opportunity to improve
 - Document all performance issues
 - Ensure the result is fair and consistent with the treatment of other employees



Tips for Annual Review



Review documents ahead of time

Summaries of performance discussion, disciplinary documents, etc.



Lead with the positive to get employee in a good frame of mind



Try to have a balanced approach – no employee is terrible at everything



Give the employee an opportunity to respond



Ask for feedback on your own performance

Documentation Best Practices

- Have separate entries for each issue/incident
- Include the date, description of the incident, and date the incident was discussed with the employee.
- Be:
 - Timely
 - Factual
 - Accurate
 - Specific
 - Honest
 - Consistent



Documentation Best Practices

- Rely on objective criteria
 - E.g., “Employee arrived to work between 17 – 26 minutes after the start of her shift 3 days last week.” vs. “Employee is late all the time.”
- Include the impact of performance failure/error where possible
 - E.g., “Employee directed the vendor to clean the wrong equipment, costing the company \$X.”

Documentation Best Practices

- Include employee admissions and attach/refer to emails or documents reflecting employee admissions
- If an employee has a justified excuse, keep the incident on the list, but note the employee's response
 - Always give employees the opportunity to tell their side
- When the manager and HR attend the same meeting, designate a note taker/someone to summarize the meeting
- Have the employee sign an acknowledgment of receipt of constructive disciplinary documents
 - If they don't, write in "refused to sign" so there is no question later about whether the employee received it

Documentation – What Not to Do

- No vague or overbroad statements
- No personal opinions
- Be careful with word choice – no legalese
 - E.g., “He was harassing her,” “she was creating a hostile work environment,” “the supervisor retaliated against employees who complained.”
- No statements that could be construed as biased
- No reference to medical issues
- Don’t overdo it – or appear to be micromanaging

Ignoring Issues Can Cost You

For Forest Highlands to prevail on a claim of employment discrimination, the company must establish a legitimate, nondiscriminatory business reason for the termination.

The employee can overcome this and win the case if it shows that the offered reason is false or not credible.

Many courts have held an employee can do this by pointing to the lack of documented performance issues.

Ignoring Issues Can Cost You

Laxton v. Gap, Inc. – 5th Circuit

Gap fired an employee based on complaints from other co-workers.

At trial, Gap could not produce any contemporaneous written documentation of such complaints.

Jury awarded over \$500,000 in damages, upheld on appeal.

Ignoring Issues Can Cost You

Federal court case in PA:

Sex discrimination/retaliation case where plaintiff alleged unequal pay as compared to male counterparts.

She was fired after complaining about discrimination.

Company terminated her, then allegedly backdated performance documents to justify termination.

Jury verdict: \$13,420,000

Scenario 1

- Three-year employee who is in a lead role
- She has been a consistently strong performer
- In the last month, she missed two deadlines and an important event was not well done
- Two employees have come to you to express concerns that she is dealing with “personal issues”

What do you do?



Scenario 1

Don't:

- Ignore it
- Gossip about what the “personal issues” might be
- Jump straight to discipline

Do:

- Meet with employee and find out what is going on
- Connect with HR about options
- Set up weekly check-ins until employee is back on track
- AND...???



Scenario 1

DOCUMENT THE DISCUSSION!





Scenario 2

- Employee just received annual review with overall “not meets expectations”
 - Review lists some issues over the last two months
 - Employee disagrees with review and refuses to sign it
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1. How do we avoid this situation in the first place?
 2. How do you respond?

Scenario 2

Question 1: Have regular meetings with your employees throughout the year

Provide feedback on an ongoing basis

NEVER address an issue for the first time in an evaluation (unless it is extremely recent)

An employee who is blindsided will rarely take it well

Scenario 2

Question 2: Have a conversation with the employee: What specifically about this review do you disagree with? Why?

There should be a place for employees to write comments/response

If there is a genuine dispute/mistake, commit to looking into it

Consider whether to involve HR

QUESTIONS?

