



THE BUSINESS OF BUILDING REDEFINED.



[HOME](#) [ABOUT US](#) [ADVERTISE](#) [SUBSCRIBE](#) [CONTACT US](#)

Dec 16, 2008

- [CITY SPOTLIGHT](#)
- [PRODUCT / TECH FOCUS](#)
- [CURRENT ISSUE](#)
- [BEST PRODUCTS](#)
- [ARCHIVES / REPRINTS](#)
- [ADVERTISER PROFILES](#)
- [ADVERTISER LINKS](#)
- [INDUSTRY LINKS](#)
- [PRESS RELEASES](#)
- [BRANDING TOOLS](#)
- [SURVEYS](#)
- [CALENDAR](#)
- [JOB BANK](#)
- [READER FORUM](#)

[Privacy Statement](#)

Archived Articles | [Go To Reprints](#)

View [Current Articles](#) Only

[RSS](#) | [V 0.9](#) | [RSS](#) | [V 1.0](#)

Published December 2008

By: Leah C. Lively and Jeremy S. Hea

OPERATIONS/LAW BETTER SAFE THAN...

Why employee performance evaluations are important for every size business

Many small businesses mistakenly believe that because of their size, they do not face the same legal liability as larger companies when it comes to managing their employees. This can be a costly mistake. While small businesses may not be covered by federal legislation—such as Title VII or the Americans with Disabilities Act—state and local laws often apply similar standards to small businesses, including many anti-discrimination laws.

Whether your business has 100 employees or 10, you might unintentionally find yourself fighting claims of discrimination, wrongful discharge or failure to promote. Given the tendency of employment conflicts to snowball, it is not uncommon for a minor conflict with a disgruntled employee to transform into a lawsuit costing tens of thousands of dollars. The financial burden of defending such a costly lawsuit can be crippling for a small company. Unfortunately, with all of the demands of running a business, many employers do not realize they may be at risk. Nor do they realize how easily these potential pitfalls can be avoided through the implementation of a performance evaluation system. By taking a few moments to view the legal landscape, you could be saving your company thousands of dollars. As the saying goes, an ounce of prevention is worth a pound of cure.

HOW CAN PERFORMANCE EVALUATIONS HELP MY SMALL BUSINESS SAVE MONEY?

Performance evaluations play a pivotal role in defending companies from potential lawsuits by creating documentation that is often crucial in establishing a defense. Simply put, correctly administered employee evaluations can be the difference between winning and losing a lawsuit. Luckily for employers, performance evaluations can be inexpensive to conduct, especially in light of the potential cost of going to trial without one. However, simply having a system in place is not enough, as incorrectly administered evaluations could actually end up doing more harm than good. By following these simple guidelines, an employer can implement an easy, yet effective, performance evaluation program that could end up paying large dividends down the road.

FIVE EASY STEPS FOR CREATING A PERFORMANCE EVALUATION SYSTEM

1. Define the Job.

Providing a thorough job description will allow both the employee and the supervisor to have a clear understanding of what will be evaluated. This clarity will result in evaluations that are more useful to both parties.

2. Provide Clear Objective Feedback, Not Subjective Observations.

Performance evaluations should focus on the objective goals and expectations of each

particular job rather than rate an employee based on the evaluator's own prejudices and biases. This requires supervisors to give specific examples of any documented misconduct or poor performance.

For example, rather than stating that an employee is "unreliable," the supervisor should contextualize this claim by noting that the employee "has missed two meetings this week." Including quantifiable data, such as sales or revenue generated, will also increase the objectivity of the appraisal and provide stronger support for future employment actions taken toward that employee.

Finally, under no circumstances should a manager speculate as to the reasons for an employee's poor performance. Not only can such speculations evidence impermissible bias, they may also be used by the employee to help substantiate a future claim. Rather, managers should focus on the employee's objective actions or omissions and how that conduct has affected the employee's job performance.

3. Use Descriptive Statements in the Evaluation.

Rating choices should be specific to the area of performance being evaluated and allow for elaboration by the supervisor. Merely having "needs improvement" or "unsatisfactory" ratings may be meaningless absent further discussion. However, employers often face a catch-22 with their performance appraisals; if comments are too general, an employer will not have sufficient detail to defend a subsequent employee charge or lawsuit. Conversely, comments that are too specific may appear to be "nitpicky" or "petty." Manager training may assist managers in finding the right balance between generalizations and specifics.

4. Provide Annual Evaluations.

To be effective, performance evaluations should take place at approximately the same time each year. Supervisors must be trained to complete these evaluations in a timely manner, as failure to perform timely and complete performance appraisals for an employee who is demoted or terminated for unsatisfactory performance may give the appearance of "unfairness" to a judge or jury.

5. Be Honest, Be Accurate.

Remind your managers that they are paid to be a supervisor—they are not paid to be an employee's best friend. Performance reviews must be accurate, even when that means saying something that might hurt a subordinate employee's feelings. Of course, while being accurate and honest, one should always remain professional. For example, do not say on an employee evaluation, "Susie is a lazy slacker who cares more about what her hair looks like than her expense reports." Instead, the supervisor should note that "Susie has turned in her expense reports a week late in three of the last four quarters, and two of those reports contained significant accounting errors that led to balance problems for the company. Susie was cautioned about her lateness and errors on June 16, 2007, and again on January 29, 2008 (see written disciplinary notices in file). Susie understands that her timeliness and accuracy must improve immediately."

While conducting performance evaluations may seem like a burden in the short term, they can have long-term, cost- saving benefits and should be implemented.

Leah C. Lively a shareholder at Lane Powell, is an experienced trial attorney exclusively defending employers from claims of harassment, discrimination, retaliation, wrongful discharge, and wage and hour violations.

LIVELYL@LANEPOWELL.COM

503.778.2199

Jeremy S. Healey is a member of Lane Powell's Labor and Employment Practice Group, where he focuses on a variety of labor and employment matters.

HEALEYJ@LANEPOWELL.COM

503.778.2162

