

## **The Importance of Having Critical Conversations with Employees Regarding Workplace Performance**

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No one enjoys engaging in difficult conversations with employees regarding workplace performance. However, putting it off or avoiding it altogether can have serious ramifications and even lead to legal liability. Too often, clients come to me with a desire to make a termination decision when they have failed to properly set the stage. When clients inquire about the potential for discharging an employee, I always ask whether the employee has been placed on notice of the performance issues. Were there any warnings issued or any progressive discipline? What does the last performance evaluation show? In many instances, the answer I receive is that there is no documentation to support such a decision.

Illinois is an at-will employment state, meaning that an employee can be discharged for any reason or no reason, as long as it is not against the law. In my experience, when an employee is discharged with no notice of performance problems, the employee frequently jumps to the conclusion that reason must be an unlawful one. The universe of protected classes under the law that gives employees a basis to claim discrimination continues to expand. In addition, there are a number of attorneys willing to take disgruntled former employee cases when the personnel file contains no evidence to support the termination decision. This can be avoided if employers stay ahead of the game and think about what the personnel file of a discharged employee should look like. This is just one of the reasons that engaging in critical conversations with employees and documenting those conversations is so important.

Failing to have those critical conversations about workplace performance can also send a damaging message to other employees. When one employee is allowed to arrive to work late or their performance is not up to par, it can cause morale problems. If an employee is allowed to behave badly, it can be perceived as bullying or even unlawful harassment, which can lead to liability. Imagine a situation where an employee is allowed to violate the dress code or has poor hygiene, causing other employees to gossip about it. By avoiding these uncomfortable conversations with employees, the issue can morph into an even bigger problem. For these reasons, and many others, it is important for employers to face these situations. The following are some tips for preparing and engaging in these difficult situations.

### **Prepare**

Preparation is key. The more prepared you are, the less uncomfortable you are likely to feel. Prior to meeting with the employee, make sure that you have outlined the workplace performance issues and any policies that are applicable to the situation. Be specific. Generalized negative feedback is not very helpful. Draft bullet points of the matters that need to be discussed in the meeting. Set clear expectations of what the

next steps are. It can never hurt to practice what you plan to say, especially if you are dealing with a sensitive topic or sensitive employee.

### **Be Positive**

No one likes to be told that they are not doing a good job. These meetings can be very emotional. If you act like this is the end of the world, your employee will feel like it is as well. Think of the meeting as a coaching and counseling session, not a doomsday experience. It often helps to also provide positive feedback on areas where the employee is succeeding. The employee should leave the meeting empowered with the knowledge of what it takes to succeed and feeling as though they have the ability to do so.

### **Listen Actively**

After you explain to the employee the issues that need to be addressed, make sure to take great care to listen. Remember, it is your job to help the employee succeed. There could be a reason for the performance issues that may need to be addressed. The employee may be the subject of harassment from another employee or customer or client, or the employee could be experiencing a medical or family issue that requires time off or a reasonable accommodation. Each of these issues can have serious legal implications if not properly addressed.

### **Consistency is Key**

All employees should be held to the same performance standards and employment policies. When one employee falls behind or fails to abide by the rules, it is necessary to intervene for the sake of all employees. This is true whether the issue is attendance, performance, or failing to dress professionally. Allowing one employee to fail can have the effect of bringing down the entire team and can also lead to claims of discrimination.

### **Have a Witness**

You should never make the mistake of having a critical conversation with an employee one on one. While these meetings are confidential and can be emotional, it is important that there is a witness to what was discussed. That witness will be very important if the matter ever leads to a legal claim. The witness can also be helpful in keeping emotions in check. Employees may react more rationally and stay more composed if there is a third person in the room.

### **Document, Document, Document**

In serious situations, a written or final warning should be presented to the employee and the employee should be asked to sign acknowledging that the employee has been advised of the deficiencies and that failure to improve will lead to termination of employment. However, not every critical conversation warrants that type of documentation. Early counseling sessions can be just as critical, but do not require the same documentation. Rather, you can simply type up a memorandum summarizing

what was discussed and place it in the employee's personnel file. That document will be very important if the performance does not improve and the conversations escalate.

### **Follow Up**

Make sure to set a time to meet with the employee again, whether it is to advise them that you have witnessed improvement and the employee is on the right track or to advise them that additional improvement is needed. Giving positive feedback keeps the lines of communication open, is good for the company culture, and may in fact help the employee to succeed. If additional improvement is needed, continue to follow these steps. By doing so, you will be placing the employee on notice that their job may be in jeopardy and you will be generating the necessary evidence to support further action, including a termination decision.

Having critical conversations with employees regarding workplace performance is never easy. However, if you follow these steps and are prepared and consistent, you will find the conversations to be less difficult and your efforts will serve to better protect the company from legal liability.



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