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## The End of the Dreaded Yearly Performance Review, pt. 1

by *Rebecca Boartfield*

The dreaded yearly performance review...was there ever a time when any employer enjoyed them? The answer is probably not. Nothing gets a louder groan from an employer than the mere mention of performance reviews. Nobody likes them, yet everybody is told to do them, year after year. "Suck it up and get it done" people say; "this is good documentation" and "helps you in the event of a lawsuit or claim." But, is that really true?

Based on our experience with thousands of clients throughout the United States, we have concluded that the standard, age-old annual performance review is no longer as effective and carries potential liability. Today requires a new, more relevant, meaningful, and productive approach.

The argument in favor of performance reviews has been that reviews create documentation that can be used to help defend employers if their actions, mostly terminations, are called into question. The fine print on this, however, has always been performance reviews done



well. Unfortunately, it's the "done well" part that becomes the problem.



### **If you can't say something nice...**

We know how that statement ends, don't we? Saying something that isn't nice is really hard to do, particularly when face-to-face with an anxious employee. Negatively critiquing an employee, even when justified, feels bad, so supervisors/employers will almost inevitably find themselves writing reviews in such a way to soften the blow, or try to ensure there is a balance between the good and the bad. This prevents writing a

the bad. This prevents writing a candid, honest review that accurately reflects the performance of that employee.

Fast forward to a lawsuit and the plaintiff's attorney subpoenas all documentation, which includes the performance review. The employer is, of course, contending that the employee was fired for performance. What will the plaintiff's attorney do with a performance review in hand that praises the employee for things being done right and minimizes the poor performing aspects? If some recent court cases are evidence, it won't be good for the defense.

Further, the following pitfalls are common when writing performance reviews:

- ▶▶ Recency effect
- ▶▶ Central tendency
- ▶▶ Leniency & strictness error
- ▶▶ Halo & horn effects
- ▶▶ Contrast error
- ▶▶ Rater bias error

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For most employers, these are difficult to avoid. The supervisor/employer must be really cognizant of these pitfalls. Too often the performance review is put off until the last minute and then the employer rushes to put something together without thinking about the above being included in the judgment of the employee's performance. These can then become the very things that get used against employers by the plaintiff's attorneys.

Additional problems with performance reviews are timing (or lack thereof), the inability to remain objective, too much focus on the past, and possible situations that may suggest discrimination or retaliation. The list seems to be getting longer each day.

Consider this, in an article titled *The Legal Case for Eliminating Performance Reviews* by attorney Judith Droz Keyes, she states, "In 35 years of practicing employment law, I



can count on one hand the number of times a performance review was of significant help to my employer-client in defending against an employee's legal challenge. Even in those few cases, the employer's position would likely have been as strong without it."

She goes on to say, "In writing this article, I did a simple word search for 'performance evaluation' or performance review' in published decisions only in the federal and state courts in California and only for a six-month period. There were 40 decisions where the performance review was cited by the court as a material fact in the case. In all but one of the cases, the review was cited not by the employer to support its defense but by the plaintiff-employee to provide his or her claim."

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# Ask the Consultant

Answer by Dayna Johnson



**Q:** When I update the insurance information for the mother of a family, the rest of the family isn't updated. Her employer is the one providing the family dental insurance.”

What is the best “family” setup in Dentrix so that when an insurance change is made for the subscriber, the dependents on the plan are also updated?

**A:** The insurance subscriber does not have to be the “Head of Household”. In Dentrix, the “Head of Household” or “Guarantor” is the person who will receive the billing statement, it does not have to be the insurance holder.

An example:

Dad – Head of Household/Guarantor

Mom – insurance subscriber for the family

In this situation, if Mom is the insurance subscriber and the insurance is attached to all family members, then any changes to the subscriber will change it for the entire family.

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All of this is evidence that the performance evaluation system that has been used for years is not the best approach for today. Yesterday, before we became such a litigious nation, this may have been appropriate. But this is today, and the times are changing.

## What Now?

Tossing the annual performance review in the nearest round receptacle does not mean the employer is relieved of managing employees' performance, giving feedback, and establishing documentation. It just means we need a more effective and relevant way to accomplish it. This new way is a multifaceted approach that may create less stress, less tension, and less worry and build better performance in the long run.

We're going to touch on the two cornerstones of this newer approach below and then explore them in greater depth in the next two parts of our series.

## Goal Setting

One of the big problems with performance evaluations, and why they're difficult to conduct, is that they focus too much on what has already occurred in the previous year. Employers can't do anything about what happened in the previous 12 months, it's a done deal. Employers can, however, work towards a better future by setting goals and holding employees accountable to those goals. To that end, what if, for example, we changed the annual performance review to the annual goal-setting review? It doesn't have to be annual – it could be quarterly or monthly if that's best for the business.

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### QUOTE-WORTHY

“

**I find that the harder I  
work, the more luck I  
seem to have.**

**-Thomas Jefferson**

”

These goals should focus on what's most important to the person's job performance. When done right, this opens up the conversation to being a constructive dialogue about the most important behaviors that are tied to the company's most desired results. It will eliminate the burden of wading through overlapping and ambiguous categories and subcategories with a 1-5 scale on a performance review form that doesn't address the real problems, highlight goals, or create ways to improve in a constructive and effective manner.

## Ongoing Feedback

Even if employers move to an annual goal-setting review, that doesn't mean waiting until the next review period (whether that's annually, quarterly, monthly, or weekly) to address problems that may arise between now and then. Nothing should be saved up and nothing should be a surprise. What is noticed about an employee's performance today, good or bad, should be expressed today, if at all possible.

Holding off until the next review could result in having to unload a bunch of problems onto the employee at one time, which won't make the supervisor/employer feel good when doing it, and certainly won't make the employee feel great once it's been done. Besides, if it's a problem, it will just continue unless addressed, which will only create more problems and make things worse. Honest, real-time feedback is likely to have more of an impact on the employee and create behavioral changes sooner (ideally) rather than later or never.

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## Disciplinary Documentation

When ongoing feedback and communication fail to impact behavioral changes with the employee, then sometimes employers must move towards a more formal system of documenting and addressing problems. By using a formal document to write up employees, employers can address problems at the same time as establishing documentation. This type of communication and documentation should be on record prior to reaching termination. This type of documentation should:

- ▶▶ State the reason for the counseling in specific, factual, scrupulously honest, concise terms.
- ▶▶ Outline the specific nature of the discipline.
- ▶▶ Describe the corrective action expected of the employee in specific, measurable terms.
- ▶▶ Warn of potential consequences if the employee fails to improve.
- ▶▶ Include signatures and dates from all parties involved.

Incorporating this kind of documentation process into the performance management picture is not new. This has been recommended as an appropriate approach all along. The difference now is, with the performance evaluation form gone, there is less of a chance that the employer also has other contradictory documentation on file to negate the effectiveness of this documentation.

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## Conclusion

Eliminating the tired, age-old, annual performance review process from an employer's plate may feel strange because conducting them has been recommended for years. But it's time to let go and move on. This is not an argument for doing nothing. This is about replacing the old with something newer, better, and more in line with the business as a whole. This simple action can free up time to work on more value-added activities and projects – things that drive business and create a more motivated, healthy workforce. The bonus is that it may also put employers in a stronger position should they find themselves having to defend their actions.

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T

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