



PERFORMANCE MANAGEMENT

Minnesota Supervisor's Conference
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Outline

- **Public sector employees**
- **Elements of an effective performance management system**
- **Final steps if efforts unsuccessful (disciplinary actions)**

Public vs. Private Sector Employees

- Public employees are afforded constitutional due process rights
- Private sector employees in Minnesota generally “at-will”



Employee Due Process And Just Cause Protections

- Merit System Principles
- Labor Contract Protections

MERIT SYSTEM STANDARDS

5 CFR PART 900

- Recruitment and selection
- Adequate and equitable compensation
- Training employees
- Retaining employees based on performance
- Fair treatment of applicants and employees
- Protection against coercion for partisan political purposes (Hatch Act)

Does The Performance Management System Accomplish What It Should

- Performance management is not just the annual appraisal
- Individual performance objectives should be measurable and based on prioritized goals that support the accomplishment of the overall goals of the total organization
- Performance management system should support your efforts to create a workforce that is customer-serving, motivated/engaged, accountable, reliable, creative, dedicated and happy to come to work.

Selection/hiring

- Selection/hiring
 - Ensuring that you hire a well qualified person for the job to reduce any chances that there will be subsequent performance deficiencies.
 - Discharge often results from poor fit between capabilities, interests and performance of a given employee



Important to ensuring an effective hiring process:

- Clear, current job descriptions
- Job-related selection criteria
- Careful screening after interview—
reference checks
- Clear communication of job offer
- Explanation of necessary changes from
understandings at hire
- Comprehensive orientation and
appropriate training/mentoring

Proper Orientation And Understandings From Day 1

- Define the purpose of the job, job duties and responsibilities and make sure that employee understands them
- Define easily understandable performance goals with measurable outcomes
- Define the priority of each responsibility and goal
- Establish performance standards
- Hold interim discussions and provide feedback about employee performance

Why The Position Description Is Important

- Clarifies duties, expectations
- Defines acceptable performance
- Serves as the basis for evaluating training needs
- If you don't have your expectations in writing (e.g., in the position description), it may be difficult to defend disciplinary action for poor performance.

Probationary Period

- Important to remember that the probationary period is part of the “assessment” or initial hiring process
- If any doubts of ability of new employee to perform duties of the position:
 - Extend probation (Merit System rules permit extension up to three months, but agencies may establish their own policies, or it is found in labor contract)
 - Terminate employment (if you’ve already extended or extension will not prove useful)

Performance Deficiencies

Consider Causes:

1) Incompetence - Inability to do the job, resulting from lack of knowledge or aptitude.

Coaching

2) Carelessness - Negligence, inattention to work or a malicious disregard for the employers rules or property.

Progressive Discipline

3) Disability – Physical or mental inability to perform the essential aspects of the job.

Accommodation

Incompetence

Inability to do the job, resulting from lack of knowledge or aptitude.

- Employee isn't necessarily at fault
- Do not treat as discipline alone

Incompetence

Recommended steps to correct unsatisfactory performance:

1. Clarify work objectives
2. Coaching
3. Retraining
4. Oral/Written Reprimand
5. Employee Assistance

Performance Management And Development Process

- Maintain a record of performance through critical incident reports, regular review of employee's work.
- Provide opportunity for broader feedback
- Develop and administer a coaching or improvement plan if performance is less than satisfactory
- Develop a plan for future growth and development

Preparing For The Performance Development Meeting

- Employee's role: reviews performance documents self-assessment comments
- Supervisor's role: collecting data including work records, reports and others familiar with the employee's work
- Both: examine how the employee is performing against criteria established and think about areas for potential development

Performance Development Meeting

- Discuss achievements and progress accomplished by employee.
- Identify ways that the employee could further develop professional performance, including training, assignments, new challenges.
- Discuss performance for the period of time assessed and suggest ways in which employee might improve/develop performance.
- Discuss areas of agreement and disagreement and reach consensus, if possible
- Set goals for next assessment period (discuss how goals support the accomplishment of the agency's objectives)
- Assuming performance is satisfactory, establish a development plan with the employee
- If performance less than satisfactory, develop a formal coaching plan.

Performance Improvement Questions

- Does the employee understand what is expected?
- Is there something about the work processes causing the employee to fail?
- Does the employee have appropriate people working with him/her?
- Does employee understand how work fits into the larger scheme of things?
- Does the employee feel valued?

Coaching

- Often a step before you have to develop a PIP, but can be done concurrently with establishment of a PIP
- First step is to describe the problem
- Ask employee's view
- Four common barriers: time, tools, training and temperament
- Discuss potential solutions
- Agree on action plan (written—can be part of the PIP or not)

Performance Improvement Plan

- Spell out deficiencies, priorities
- Explain means of measurement
- Define goals and timetables
- Identify action steps, including any needed coaching/training
- Structure increased reporting by employee
- Clarify deadlines or timelines
- Specify consequences
- Document and communicate with employee
- Make sure you follow established policies and practices
- Be consistent
- Performance expectations should never be a mystery!

Long Term Employees Who Have “Plateaued”

- Employee engagement strategies
 - Jobs and the competencies required often evolve and change and employee may not be the best fit any longer
 - Achieving a shared understanding of how the employee’s interests and strengths fit with the job is helpful
 - Explore what could be changed to capitalize on employee strengths and interests.

When Attempts To Re-engage Long-term Employee Have Failed

- More intensive coaching may be called for
- Performance improvement plan
 - Considerations: employee training/re-training, referrals to employee assistance programs

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Accommodation

Incompetence

The employer should be able to show that steps were taken to salvage the employee:

Assistance

Advice

Retraining

Progressive Discipline

Consideration of Transfer or Demotion

Incompetence

Employee must be informed of:

possible disciplinary consequences;

steps necessary to bring performance up to standard;

time in which improvement is expected.

Incompetence

Recommended steps (continued)

6. Withholding a progression increase
7. Reassigning/transferring
8. Leave of Absence
9. Demotion for cause
10. Termination

Carelessness

Negligence, inattention to work or a malicious disregard for the employers rules or property.

Types:

Neglect of Responsibility

Habitual Carelessness

Gross Negligence

Carelessness - Considerations

Would this happen again

Attitude of the employee

Was there injury or potential for injury

Effect on your customers

Employees length of service

Disability

Physical or mental inability to perform the essential functions of the job.

Employee requesting accommodation does not have to mention the ADA or use the phrase “reasonable accommodation.”

Employer must engage in the “interactive process” with the employee to determine whether an accommodation is needed.

Can the employer make reasonable accommodation without undue hardship?

Disability

Related Federal and State Statutes (see
handout)

ADA

Rehabilitation Act of 1973

Human Rights Act

Performance Based Discipline

Merit System Council Case Review

20 year social work employee dismissed for poor performance.

5 years into career rule change – increased documentation – reassignment, training.

10 year adequate performance – problems again-- reassignment, progressive discipline, leave of absence, termination.

Disciplinary Considerations

Just Cause Principles (The Seven Tests):

1. Forewarning

2. Reasonable

3. Investigation

4. Fair Investigation

5. Proof

6. Discrimination

7. Penalty

Just Cause For Discipline

Test I: Forewarning

- Did the employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?
 - Was the policy or rule disseminated?
 - Was there training?
 - Was there a performance improvement plan?
 - Was there progressive discipline?

Just Cause For Discipline

TEST 2: Reasonable Rules

Was the employer's rule or order reasonably related to the orderly, efficient and safe operation of the employer's business and the performance that the employer might properly expect of the employee?

Just Cause For Discipline

TEST 3: Investigation

Did the employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

- Investigation must be thorough and timely
- Inadequate investigations produce inadequate proof
- An investigation is required to ensure due process



Employment Investigations (See Handout)

- Overview
- Steps to Follow
- Mitigating Circumstances

Just Cause For Discipline

TEST 4: Fair Investigation

Was the employer's investigation conducted fairly and objectively?

- For an investigation to be successful, it must be objective.
- Collect as much available evidence as possible.
- Evidence should be reviewed by disinterested third party.

Just Cause For Discipline

TEST 5: Proof

Did the employer obtain substantial evidence or proof that the employee was guilty as charged?

- Burden is on management to prove that the incident did, in fact, occur.
- Just cause for disciplinary action must be established by proof of the charges contained in the discipline notice.

Just Cause For Discipline

TEST 6: Discrimination

Has the employer applied its rules, orders and penalties even-handedly and without discrimination to all employees?

- Two employees involved in the same incident; One is disciplined and the other is not.
- Employee disciplined because of union involvement.

Just Cause For Discipline

TEST 7: Penalty

Was the degree of discipline administered by the employer in a particular case reasonably related to the seriousness of the employee's proven offense and the service record of the employee?

Essential element of just cause that the penalty be fair, reasonable and fitting the circumstances of the case.

Loudermill Rights

Public employee is entitled to not only just cause protection by virtue of civil service laws or collective bargaining agreements, but also due process protection under the U.S. Constitution.

M.S. Dismissals 9575.0910 subpart 2

The employee shall be permitted 5 days time to reply... prior to the effective date of the dismissal.

Employee Meetings

- 1) Investigation
- 2) Discipline
- 3) Loudermill (Pretermination)

Appeal Rights

- If covered by collective bargaining process, union affords a grievance process
- If not covered by a collective bargaining agreement, regular, permanent employee has rights to appeal to Merit System Council for demotions, suspensions of more than five days and dismissals
- Minnesota Rules, parts 9575.1150-9575.1200

Veterans Hearings

Minnesota Statutes §197.46 governs removal of veterans from positions

Veteran has 30 days to request a hearing.

Hearing is before the Merit System Council, or in county with its own merit system, the Personnel Board of Appeals (Veteran may also choose an arbitrator).

Veteran may appeal decision to district court.

Questions?

- Brent Boyd
 - **Brent.Boyd@state.mn.us**
 - **Phone: 651-431-3026**

- Betty Carlson
 - **Betty.Carlson@state.mn.us**
 - **Phone: 651-431-3025**