

Implementation of the Performance Appraisal Process: Concerns for the Health Club Manager

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The performance appraisal process has been discussed in the management literature since the 1950s. The topic gained considerable popularity during the 1970s and 1980s, particularly with the influx of human resource development theories. Articles and texts in the 1990s continue to focus on the implementation and resultant positive effects of the performance appraisal process. The performance appraisal process is a significant benefit to managers engaged in employment-related litigation. For example, employees are increasingly contesting managerial decisions about hiring, firing, promoting, and training. As Eyres (1989) states, "When memories fade or perceptions differ, the best evidence of what occurred, and why, is performance appraisal records."

The performance appraisal process is used in a wide range of business operations. Health clubs, for example, are beneficiaries of a performance appraisal process. Unfortunately, the mere existence of a performance appraisal is not going to protect an operation from litigation. Seven managerial concerns regarding implementation of a performance appraisal process are discussed throughout the paper.

■ CONCERN #1: LACK OF POLICY ENFORCEMENT

Employers use the policy manual to orient new or potential employees about health club operations. In regards to the performance appraisal process, a club's policy manual may promise annual performance appraisals and due process or a grievance procedure. Literature (Chagares, 1989; Harris, 1986; Witt and Goldman, 1988) notes that provisions within a policy manual may be binding regardless of a state's adherence to employment-at-will practices. A health club manager may be liable for breach of a unilateral contract (the policy manual) by failing to adhere to the manual's contents (Eyers, 1988; Nobile, 1991; Panaro, 1988; Webster, 1988). The use of qualifying, non-committal language and disclaimers can effectively prevent liability (Chagares, 1989; Nobile, 1991; Witt & Goldman, 1988).

For example, consider the following statement, "each employee will be evaluated in December." The employee not evaluated in December may allege club

liability via breach of a unilateral contract. The following statement exemplifies how a health club can transfer the responsibility, and consequent blame, back to the individual employee.

Management will **attempt** to evaluate the performance of each employee on an annual basis. **Notify your immediate supervisor if you are not evaluated within the course of a year.**

The statement undoubtedly provides management with more latitude than the prior, more direct statement which promises the employee an evaluation every December.

The effective use of disclaimers also aids a health club in disputing a plaintiff's claim that the manual's contents are binding (Chagares, 1989; Panaro, 1988; Witt & Goldman, 1988). For example, Montgomery Ward used disclaimers in both their Progressive Discipline Reference Guide (PDRG) and the human resource policy manual that prevented a plaintiff's claim in 1987 (*Dell v. Montgomery Ward*, 1987). The plaintiff claimed that Montgomery Ward did not follow the discipline procedure as stated in the company literature. However, qualifying language in the discipline guide protected Montgomery Ward. The guide stated that the "procedure does not form an employment contract" (*Dell v. Montgomery Ward*, 1987). Consequently, the plaintiff's claim was moot. Montgomery Ward also used a disclaimer in its policy manual. The disclaimer stated that the manual's "procedures should not be interpreted as constituting an employment contract" (*Dell v. Montgomery*, 1987). As illustrated above, a disclaimer using simple, unambiguous language is effective.

Unilateral policy amendments are binding only if management gives employees reasonable notice about the modification. Without proper notice, health club managers are accountable to the old verbiage printed in prior manuals.

■ CONCERN #2: IMPROPER EVALUATION CRITERIA

The Equal Employment Opportunity Commission will refer to the Uniform Guidelines on Employee Selection Procedures (Guidelines) when evaluating the legality of a performance appraisal process. The Guidelines encourage the use of criterion-related, content, or construct validity studies to support criteria having an adverse impact on employment practices. Criteria with no adverse impact does not need to be validated.

Valuative criteria should be directly related to those tasks necessary to perform a particular job. Literature encourages the use of a job analysis when selecting performance appraisal criteria (Barrett & Kernan, 1987; Uniform Guidelines, Huber, 1983; Shaw, 1990). Only the specific work behaviors of each job should be recorded (Ashe, 1980; Burchett and De Meuse, 1985; Nobile, 1988; Uniform Guidelines, 1991; Webster, 1988). Identification of the qualifications, characteristics, and attributes of individuals currently engaged in a particular job does not constitute a job analysis. For example, simply because current employed exercise prescriptionists are all women does not mean that all future exercise prescriptionists must also be of the female gender.

Courts continue to refer to the landmark decision in *Griggs v. Duke Power Co.* (1971) when deciding the legality of selection criteria. The plaintiffs, Griggs, challenged the criteria for employment and job transfers. Justice Burger stated in the Supreme Court opinion that:

Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to “freeze” the status quo of prior discriminatory employment practices (p.430).

■ CONCERN #3: LACK OF COMMUNICATION

Managers should discuss the performance appraisal process with all newly hired employees. In addition, the club manager should ensure that the evaluated employees receive feedback, both positive and negative, about the appraisal (Ashe, 1980; Burchette and De Meusse, 1985; Shaw, 1990). Furthermore, employers should communicate ways the employee can improve negative ratings.

Failing to address deficiencies to protect the feelings of an employee can prove to be legally devastating (Ashe and McRae, 1985; Eyres, 1989; Nobile, 1991; Webster, 1988). Barrett and Kernan’s research (1987) indicate that the courts “react favorably to the use of performance counseling designed to help employees improve substandard performance.”

Ashe (1980) and Metz (1988) both suggest that management provide the employee with both an oral and written review (signed by the employee) of the completed evaluation. A recent court decision (*Woolery v. Brady*, 1990) also supports the employer who had employees read and sign performance evaluations. Management’s liability is more difficult to prove when an employee who has read and signed a completed appraisal fails to pursue a grievance within a reasonable time span. Failure to express dissatisfaction about the performance appraisal indicates that the employee agreed to the appraisal’s accuracy.

■ CONCERN #4: COMMUNICATION LEADING TO ALLEGED DEFAMATION

Defamation by “Self-Publication”

Defamation by self-publication defies the traditional interpretation of communication. For example, communication between a health club employer and an employee does not involve a third party. However, a club employer can be liable for comments communicated to an individual employee in a one-on-one, private confrontation. For example, “communication to a third party” transpires when an ex-employee communicates the contents of his or her performance appraisal to a prospective employer. Consider the following situation.

An individual applies for a job at a local health club. In the interview, the prospective employer tells the candidate that her past employer will be contacted as a reference. The candidate is fully aware that her relationship with her past employer was adversarial. In fact, the candidate vividly remembers the belittling, derogatory comments made during her annual performance appraisal review. The individual

has two reasons for telling the prospective employer that he may not receive a favorable recommendation from the past employer. One, communication will allow the candidate to explain and diffuse serious allegations. Two, the candidate is only communicating the truth. As stated by the Minnesota Supreme Court (*Lewis v. Equitable*, 1986) it is better to communicate the alleged reason for dismissal rather than to lie. "Fabrication . . . is an unacceptable alternative" (p. 888).

The key issue is foreseeability. The health club manager could be liable for defamation if it is foreseeable that the employee may have reason to repeat the communicated information at a later time.

Providing information to persons who do not have reason to hear the information

Communication among managers within a particular health club is often protected from liability as the **benefit** derived from the flow of information **outweighs** any resultant harm (Duffy, 1982). For example, communication among colleagues about employee performance is necessary when filling a higher level position. This communication can ensure that the best person is chosen for the job. Consequently, the club reduces expenses associated with employee turnover, absenteeism, recruiting and training. However, literature (Daniloff, 1989; Duffy, 1982; Jacobs, 1990) indicates that internal communication among managers is abused when information expands beyond that necessary to achieve company or business objectives.

For example, a manager at General Motors elaborated on a plaintiff's "resignation" (alleged theft) to other non-supervisory personnel to curtail the occurrence of similar behavior (*Gaines v. Cuna*, 1982). In the opinion of *Gaines v. Cuna* (1982) the Fifth Circuit Court of Appeals held that a manager's comments had extended beyond those who had a reason to know. Consequently, a health club manager should use caution when discussing with others the contents of an individual's inferior performance appraisal.

Health club managers can also be subject to defamation when failing to investigate communicated information. For example, a day manager should not merely presume that the night manager's interpretation of an incident is accurate. Club managers should investigate the validity of all allegations which may, or may not, be truthful.

■ CONCERN #5: NONEXISTENT OR INADEQUATE RATER TRAINING

It is not always possible for one manager to perform all employee performance evaluations in large health clubs. However, it is also not prudent to have inexperienced individuals evaluating employee performance. In fact, research (Barret and Kernan, 1987) indicates that courts look more favorably on plaintiffs when a defendant company lacks rater training procedures. Barret & Kernan (1987) suggest that novice raters thoroughly study employee job descriptions and engage in practice rating exercises prior to evaluating individual employees.

Longnecker (1989) acknowledges that a comprehensive rater training program will not eliminate all bias. As Longnecker (1989) has stated, "Occasionally managers feel the need to manipulate ratings in the perceived best interest of their employees, their departments, and perhaps even themselves." For example, a manager that shies away from confrontation, is sensitive to personal influences (e.g., divorce, illness), or who fears resultant attitude problems may intentionally bias performance appraisals. This "intentional inaccuracy" should also be discussed with prospective raters (Longnecker and Ludwig, 1990).

■ CONCERN #6: NONUSE OF MINORITY RATERS

In *Rowe v. General Motors* (1972, p. 359) the Fifth Circuit Court of Appeals stated that minorities may have "been hindered in obtaining recommendations from their foremen since there is no familial or social association" between the all-white supervisory work force evaluating minority employees. Stacey (1976) addresses the need for minority raters which reflect the employee constituency. Health club managers would be prudent to secure raters who are representative of the work force.

■ CONCERN #7: FAILURE TO MONITOR THE SYSTEM

The performance appraisal process cannot operate in a vacuum. In *Rowe v. General Motors Co.* (1972, p. 259) the opinion stated that the lack of "safeguards in the procedure" insulated discriminatory effects. The implementation of a formal grievance system can provide evidence that the performance appraisal process is monitored (Ashe, 1980; Barrett & Kernan, 1987; Burchett and De Meusse, 1985; Eyres, 1988). Health club managers should provide employees with an opportunity to file a grievance when the performance appraisal process is contested. Several complaints serve as an alarm to club managers that the performance appraisal process may be problematic.

In addition to the implementation of a formal appeal system, the research performed by Barrett and Kernan (1987) indicated that courts look favorably on an entity which has implemented a "review system by upper-level personnel to prevent individual bias." Ashe (1980) and Webster (1988) also support the use of a second rater. A health club may curtail rater bias via second review process. Club managers are cautioned about providing second raters with the first rater's evaluation. As noted by the Oregon District Court, the likelihood of an objective rating is diminished when the prior rating results are known (*Loiseau v. Dept. of HR*, 1983).

■ CONCLUSION

The performance appraisal process is an asset to health club operations. Health club managers and employees are encouraged to thoroughly read and adhere to the information printed in a policy manual since the manual can be construed as a unilateral contract. The use of disclaimers and qualifying language has proven to be effective in deferring liability.

A current, comprehensive job description and a job analysis should be used to determine the evaluation criteria for each club employee. All criteria should be

validated and raters should undergo training to eliminate biased criteria and rating errors. Management should further ensure that the chosen raters adequately represent the employee constituency in regards to various norms, values, and beliefs.

Performance appraisal feedback should be provided to the employee in both oral and written form. Establishment of a grievance system will further assist management in the monitoring of the performance appraisal process while providing disgruntled employees with an opportunity to be heard.

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