RISKY BUSINESS

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Miami Valley Risk Management Association
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FYI-

Performance Evaluations

By Tom Judy

I recently read an article on the top reasons employees sue their employers. Out of curiosity, I searched for other articles on the same topic. One common theme between the articles was that an employer invites a suit when they terminate an employee for bad performance even though the employee has had good performance evaluations.

It is my experience that performance evaluations are often intentionally inaccurate. That is a bold statement but hear me out. This intentional inaccuracy does not come from any malice on the part of the supervisor. On the contrary, it is attributable to the supervisor's desire to spare the employee – and the supervisor himself – from an awkward conversation. The result is performance evaluations that minimize or ignore performance deficits.

Articles

Oftentimes, a government entity's pay structure is such that employees' pay raises are relatively independent of their performance evaluations. This dynamic makes it easy for the supervisor to rationalize that the performance evaluation "really doesn't matter anyway." A supervisor trapped in that logic finds herself in a cycle that is difficult to break. As time goes on, it may seem as if the performance evaluation really doesn't matter – until it does. When an employer is served with a wrongful termination suit, defense counsel will immediately request the recent performance evaluations. If the employer's narrative is that the employee has a track record of poor performance, it should be reflected in the documentation.

Perhaps an even larger problem with a sugar-coated performance evaluation is that it represents a missed opportunity. A good performance evaluation process identifies areas of untapped potential and enables the supervisor to help the employee realize that potential.

This a topic that could go on for pages but I will share 10 things I have learned through the years about performance evaluations:

1. The employee is probably already aware of his deficiencies. Engage the employee in a conversation about his perception of his performance. Consider asking the employee to self-evaluate. It is my experience that, more often than not, the employee's evaluation of his own performance is more critical than the supervisor's. This process can break the ice on a productive discussion about performance improvement.

2. Be specific. The supervisor must be able to support negative ratings with specific examples of events that occurred during the evaluation period. The supervisor should maintain a file throughout the year in which she notes examples of both good and bad performance.

3. Generally, we know a "bad attitude" when we see it, but appropriately documenting it on a performance evaluation is difficult. An employee's "bad attitude" will manifest itself in behaviors such as poor communication, inappropriate interactions with other employees or customers, or measurably poor work performance. The supervisor should focus on such specific actions rather than a generalized assessment of the employee's attitude.

4. If the employee is surprised by their performance evaluation, it is an indication the supervisor did a poor job throughout the year in real-time coaching and mentoring.

5. Understand the rating system. On a scale in which a 3 indicates an employee is meeting the objectives, start there and consider whether there are specific reasons to move that grade down or up. No one is a "5" in every facet of their job. When evaluating the best employees, it is very easy to give them a top grade in every category, but even the best employees have things they can work on. It is the supervisor's responsibility to identify those areas.

6. Evaluating employees' performance is a fundamental facet of the supervisor's job. The supervisors themselves should be evaluated on how well they carry out this critical task.

7. If you don't have goals, you are going nowhereh in particular. You may have specific goals in mind for the employee to achieve, but ideally, goal-setting is a collaborative process. Consider asking the employee to formulate goals for herself as well. Goals formulated this year provide a basis for next year's evaluation.

8. If it is at all possible, goals should be measurable. For example, a goal of "respond to citizen inquiries on a timely basis" is of little value unless there is a quantifiable definition of "timely basis."

9. Pursuit goals are preferable to maintenance goals. While there is nothing wrong with a goal of maintaining good performance, an even better goal is one that encourages the employee to attain new heights. The old axiom is true: we are never standing still, we are either falling back or moving forward.

10. A good supervisor will take the information shared in the performance evaluation and turn it into a plan to encourage, equip, coach and mentor employees toward better performance.

Performance evaluations are a key tool the supervisor can use to help employees improve their performance. In those unfortunate circumstances in which it becomes necessary to discipline or terminate an employee, performance evaluations provide critical documentation. Learning to do this well requires training. Members are encouraged to send their supervisors to one or more of the training sessions MVRMA sponsors on this topic. Please contact Starr Markworth if you would like to have a training session brought to your city.

The Claims File…

Craig Blair

MVRMA's Claim Reporting Policy requires each of its members to report the following claims to the Association in a timely fashion: 1) All third party (damages to other parties) claims, regardless of the dollar amount and 2) First party (damages to city property) claims, including auto physical loss, if the loss exceeds or potentially exceeds $1,000.

Timely reporting is crucial to efficient handling of claims. Prompt preparation of internal incident reports and statements from employees and witnesses preserves this information while it is still fresh in everyone's mind. Timely submission of this information enables MVRMA to make a prompt initial contact with the claimant and other third parties.

When MVRMA receives a claim, it is processed under Ohio Revised Code 2744.05, which sets forth what is commonly referred to as "governmental immunities" or "sovereign immunities". These immunities allow tax-supported public entities the offsets of available coverage. As a result, third parties first need to use their own insurance and, if the City is liable, MVRMA would be responsible for any cost not covered by their policy. Prompt submission of the initial information to MVRMA permits proactive handling of the claim and minimizes the city's need to deal directly with the claimant.

The Claim Reporting Policy and all other MVRMA policies, are available for your review in the MVRMA Handbook on MVRMA's website. For any claims questions or other assistance, please contact MVRMA staff.

Loss Control Lowdown…

Ohio Public Risk Reduction Program (PERRP) - *New* Safety Partnership Agreement Program

Starr Markworth

The PERRP Safety Partnership Agreement (SPA) program is open to all public employers that meet the participation requirements. The program recognizes public employers that have exemplary safety and health programs. Program participants are encouraged to serve as occupational safety and health mentors for other public employers. ***SPA participants are excluded from PERRP general schedule inspections.***

Amendments to the ORC 4167.10 in 2017 added scheduled inspections to the list of enforcement inspections. General schedule inspections will focus on high-risk employers and high hazard work activities. Amendment requires an OAC 4167 rule that will explain the inspection criteria. The new inspection rule will require inspections to be conducted according to a policy and procedures manual (PERRP Field Operations Manual) and enforcement inspections to be conducted without delay.

The basic program participation requirements are:

- The public employer has an active workers' compensation policy and is current with respect to all payments due to the bureau.
- The public employer has an injury and illness history less than the aggregate incidence rate for all Ohio public employment sectors.
- The public employer must establish and maintain a safety committee.
- The public employer must not have any open, unresolved, or outstanding PERRP enforcement actions.
- The public employer must agree to comprehensive employment risk reduction inspections.

If you're interested in learning more about this new program, email PERRP SPA, or visit the PERRP Safety Partnership Agreement (SPA) Program page where you can find detailed information about the program, and the application.

PERRP provides a variety of specialized workplace safety and health services for Ohio's state, county and local government agencies, school districts, public colleges and universities. PERRP services promote safe workplaces and the prevention of injuries and illnesses by raising awareness of occupational safety and health hazards and risk factors.

PERRP is your partner in workplace safety and health risk reduction. PERRP provides compliance assistance to public employers at no additional cost.

- Voluntary compliance assistance inspections
- Written safety program reviews
- On-site safety training and presentations
- Work-site surveys related to noise, chemical exposures, ventilation, biological and other health hazards

Industry-Specific Safety Program services

If you would like more information regarding PERRP, please visit their website or use contact information below: Public Employee Risk Reduction Program

PERRP Contact Information
Ohio Public Employment Risk Reduction Program (PERRP)
13430 Yarmouth Drive
Pickerington, OH 43147
Phone: 800- 671-6858
Fax: 614-621-5754
Email us

Broker's Beat

State of the Property and Casualty Insurance Market

We have been experiencing what some are referring to as a market correction the past 12 months, brought on by record natural disaster losses the past few years. "While property lines were hit first and hardest due to hurricane activity over the past two years, casualty insurance buyers are also feeling the effect of the hardening market, say observers, who point to higher jury awards as a major factor", according to a recent Business Insurance article.

Global economic losses from natural catastrophes and man-made disasters in the first half of 2019 totaled $44 billion, according to Swiss Re Institute's preliminary sigma estimates. This figure is lower than the losses of $51 billion reported for the same period a year earlier. Of the total global economic losses in the first half of 2019, $19 billion were covered by insurance, the main driver being thunderstorms and flooding events in different parts of the world

Key Industry Metrics that we use to gauge the financial health of the property/casualty commercial insurance sector include.

- The U.S. property & casualty industry combined ratio deteriorated to 95.6% in the first-quarter 2019 compared to 94.6% in the first quarter 2018.
- Industry surplus was $779.5 billion as of 3/31/19—up from $742.2 billion at year end 12/31/18, as the stock market recovered from a downturn at the end of 2018.
- Private U.S. property/casualty insurer's net income after taxes grew 4.5% from the 1st quarter 2018 to the 1st quarter 2019.

While investment income and insured losses from natural catastrophes improved in the early part of 2019, they remain a concern for the industry. Interest rates remain low and are limiting insures' investment income; natural disasters in the 3rd quarter are a reminder of what can happen. Insured damages in the Caribbean (Hurricane Dorian) could be as much as $6.5 billion and estimated insured losses for Typhoon Faxai will be between $3 billion and $7 billion.

Looking ahead, the expectation is that there will continue to be upward pressure on property rates, and public agencies that are continuing to see high verdicts and liability settlements will continue to see increases and the marketplace for coverage will continue to retract. "Observers generally predict at least another 18 months of a hardening market" (Business Insurance).

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Counselor's Comments

By Dinsmore &Shohl

Examining the "Good Faith" Requirement of Light Duty Job Offers

Light duty job offers can be a good way for employers to minimize the payment of temporary total disability compensation and to bring injured workers back to the workforce. However, these job offers must conform to very specific requirements under the Ohio Administrative Code. To be valid, a written job offer shall identify the position offered, include a description of the duties required of the position and clearly specify the physical demands of the job. Additionally, the light duty job offer must be made in good faith, be of suitable employment and be within a "reasonable proximity" of the injured worker's residence. The "good faith" requirement of a light duty offer was just examined by the 10th District Court of Appeals and the Ohio Supreme Court with a somewhat surprising result.

In the recent case of *State ex rel. Pacheco v. Industrial Commission,* the Supreme Court reviewed a job offer that had been extended to an injured worker. Specifically, the claimant in the *Pacheco* case sustained foot and ankle injuries. The employer offered a light-duty position, which the claimant accepted and worked under for three weeks. The light duty job primarily required the claimant to perform web-based trainings on a laptop computer and to sort paperwork. These duties were performed in the company cafeteria. After three weeks, the claimant returned to a new doctor who completed a report indicating that the claimant was not released to work. However, the restrictions provided by the new doctor were similar to those under which the claimant had accepted the light duty offer. The claimant requested temporary total disability compensation and the Industrial Commission denied the request based on the claimant's abandonment of the light-duty position. After various appeals between both parties, the 10th District Court of Appeals found that the light duty offer *was* within the claimant's medical restrictions. However, the court then went on to make their own finding that the job offer was not made in good faith. Subsequently, the case was appealed to the Ohio Supreme Court.

As for the light-duty job itself, the claimant alleged that the employer sat him in the company cafeteria with essentially nothing to do to serve as a warning to other company employees. The employer argued that the claimant was placed in the cafeteria in order to put him in close proximity to the parking lot and restroom, in accordance with his work restrictions. At trial, the employer also argued that the claimant was barred from arguing the validity of the light-duty offer since he had already accepted the offer. The Supreme Court reversed the Court of Appeals and held that the Industrial Commission must be first to determine whether a light-duty job offer is made in good faith. The Court also rejected the proposition that the claimant could not argue the validity of the job offer merely because he had previously accepted the offer.

The *Pacheco* case serves as a good reminder that the "good faith" requirement of light-duty job offers cannot be overlooked. Cases that have reviewed whether a job offer was made in good faith have included an examination of the hours of the offered job, proximity of the job to the claimant's original work location, etc. However, it is reasonable to conclude (especially given the findings of the Court of Appeals in this case) that employers must also consider whether the job duties (or lack of job duties) can be perceived by an injured worker or their co-workers to serve as a punishment or as a warning. This can be a challenging tightrope for employers to walk given that many companies do not have "light duty" positions readily available and as such, often attempt to create positions that conform to a claimant's work restrictions. The lesson for employers here is to simply keep in mind that providing an employee with mental task or requiring them to watch training videos for the majority of their shift could fall the "good faith" requirement of a light duty job offer.

Calendar of Events

Upcoming Training Events

Forklift Training - November 6th and 7th, 2019 - Kettering
Forklift Training - November 12th, 2019 - Blue Ash
Forklift Training - November 18th, 2019 -Tipp City

Employment Law - November 14th, 2019 - Location to be announced
Police and Autism - December 5th and 17th - Location to be announced

Upcoming Board Events

Committee Meetings (at MVRMA Office, 3085 Woodman Drive, Suite 200, Kettering)
Risk Management - December 3rd 10:00 AM
Finance - December 3rd 1:30 PM

Board Meeting & Holiday Luncheon
December 16th - 9:30 AM at Home2 Suites, Centerville

From The Board Room

Actions taken at the June 17th Board meeting included:

* Approved Revised Litigation Management Policy
* Accepted Financial Report and CAFR for YE 12/31/18
* Accepted Loss Funding Study for 2020
* Approved 2020 Preliminary Budget and PCF
* Approved Revisions to Shock Loss Fund Policy
* Approved Transfer of SLF Funds to Operating Fund
* Approved Revised Prospective Member List