

# Performance management and the law



Carlos M Garcia

Introduction:

Within an organization there are many different ways to follow and obeyed employees' regulations laws. These laws are governed by federal, state and judicial legislation, made to avoid lawsuits, discrimination, and to equalize bargaining power between employers and employees. According to (Smither, J. W., & London, M., 2009), information would be required based on employees' performance management to take further action either against or in favor of the individual. It is legally allowed to support supervisors/ managers and the organization in case of legal action from an employee. To approach these situations, the organization should follow certain steps to be fair to its employees and meet the U. S. federal regulations laws for employee personnel actions.

To minimize the risk of employee-initiated litigation, employers must develop a checklist with the points necessary to ensure compliance with fair, consistent and legally sound performance evaluation systems. Such as, Inform employees in advance of performance evaluation standards. When hiring a new employee or adopting new standards, supervisors must update job descriptions and performance assessment forms, and copies should be given to all affected employees. Document all performance problems on a regular basis and on appropriate evaluation or gradual disciplinary action forms it should be very important for the records. An accurate format for conducting the evaluations allows the most complete and accurate recording of the information. Informality, on the other hand, can lead to discrimination

claims. Federal and state laws prohibit discrimination in the workplace under Title VII of the Civil Rights Act (Miller, F., n. d.).

Also, give employees meaningful feedback because a vague, generalized or subjective assessments can lead to litigation. For example, when bosses tolerate an employee with performance problems for months and then suddenly give him a negative assessment and dismiss him, the employee can claim that the action was arbitrary or discriminatory and may be able to show that he was not given an opportunity to improve. Therefore, it should be essential to train supervisors in evaluating employee performance and how to manage the company's assessment system.

Every organization's policies and procedures must comply based on federal and state laws related to employees, which allows equal employment opportunity, sexual harassment, safety, and much more. It is the organization's responsibility to provide every employee the policies and procedures related to federal laws such as the standards of conduct, nondiscrimination, benefits, etc. At Comcast, every employee must have a policy pocket book with them at all the time, and every year they need to review the handbook and acknowledge it. The organization must maintain new and old employees informed about U. S. federal regulation equally to all employees.

A performance evaluation based on invalid outcomes can lead to adverse impacts, such as, discrimination, involve personal issues, and other situations that can lead to legal actions. For the same reason, legally defensible performance evaluation system must be implemented. Therefore,

evaluators must personally know employees' performance. The system adverse impact it will always exist some way or another, but it could minimize by continuous system reviews to keep a positive performance appraisal and fairly to all employees equally. Based on (Smither, J. W., & London, M., 2009), by "including contextual performance as part of the job performance criteria will actually reduce adverse impact in selection since the predictors of contextual performance have little adverse impact" (Smither, J. W., & London, M., 2009),

There are different methods to evaluate performance management within an organization. Since it is not an easy task to assess the performance management to all individuals using criteria of fairness and justice, and at the same time stimulating them (Gilliland, S. & Langdon, J., 1998). Therefore, to ensure fairness in the performance process:

- The organization should develop a system where all employees meets the needs as customers, this way the evaluation will reflect how customers would rate them, if employees do not accept the performance appraisal outcomes the system will not meet the needs and it will result in a conflict (Gilliland, S. & Langdon, J., 1998).
- The opportunity to evaluate managers and supervisors will give employee a sense of fairness. It will help to improve the organization on various different aspect, it will help to identify any issues within the workplace related to sexual harassment, discrimination, favoritism, etc.
- Value employees' opinions and let them participate in situations where the individual can be valued for his/ her performance.

## Conclusion

Therefore, in order to achieve the objectives proposed by the organizations, they must have a suitable staff to compete in the demanding business environment. Therefore, it is important to express that the performance evaluation plays a fundamental role in the companies since through it is possible to determine which is more competent personnel to carry out the activities inherent to the positions. It can be concluded that when considering the human resource as a decisive factor and an important asset, well-defined performance evaluation policies must be implemented to detect failures within organizations, in order to achieve favorable changes in their structure and performance, and maintain a relationship of justice and fairness with all workers.

## References

Gilliland, S. S., & Langdon, J. C. (1998). Creating performance management systems that promote systems of fairness. *Josey Bass*, 209-243

Miller, F. (n. d.). Ethical discrimination in the workplace. Retrieved on March 22, 2017, from <http://smallbusiness.chron.com/ethical-discrimination-workplace-1408.html> (Links to an external site.)

Smither, J. W., & London, M. (Eds.). (2009). *Performance management: Putting research into action* (Vol. 21). John Wiley & Sons.