

## Keeping Your Feedback Job-Related and Legal

Remember that what you say "can and will be used against you." Written oral feedbacks are powerful tools to correct behavior and improve performance. However, careless comments can come back to haunt you if an employee later claims that she has been discriminated against or wrongfully terminated. A few keys to keeping your comments legal are discussed below:

- Be familiar with the basics of HR law, including Title VII, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Pregnancy Discrimination Act, and the Family and Medical Leave Act. And there are others.
- Understand who is protected under federal antidiscrimination legislation and that you should avoid comments that could be interpreted to discriminate on the basis of sex, race, religion, national origin, color, age, disability, military or immigration status, etc. or because someone has exercised a protected right such as taking jury or FMLA leave, filing a complaint, "whistleblowing", filing a workers' compensation claim, etc.
- Remember also that many states have expanded the federal protections (e.g., sexual orientation protections). So beware!
- Stay well clear of "the discrimination line" by avoiding even the appearance of illegal comments. Remember that comments can easily be misinterpreted.
- Keep feedback job related, specific, and objective. Avoid offering opinions or comments about the employee personally. It's all about job performance, not the person.
- Be consistent with your employees. The amount and type of feedback should be similar for similarly situated employees.
- Make sure all documentation is consistent and that documents support each other. Don't forget that your performance appraisals should be consistent with your documentation.
- Remember that comments/feedback don't replace formal corrective action, such as a written warning, but simply support it.
- "How" you give feedback is as important as "what" you say.
  - It's estimated that 95% of all communication is nonverbal. You may "say" one thing but your facial expressions and body language may be "screaming" something else.
  - Don't make comments when you are upset or angry. Take some time and calm down, perhaps discuss the issue with an uninvolved party. Allowing yourself to "vent" a bit may put things into perspective. Comments are more effective if they're not "personal".
  - Avoid providing feedback when the employee is tired, stressed, or busy.
  - Provide your comments in a professional manner, in a private setting when you won't be interrupted or when other people aren't around.
- Be professional and courteous. Many observers believe that many employment lawsuits initially arise not because an employee believed he was a victim of discrimination but because he was unfairly or improperly treated, disrespected, or demeaned.